S. HRG. 101-227

CAMPAIGN ADVERTISING ACT

HEARING

BEFORE THE

SUBCOMMITTEE ON COMMUNICATIONS

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

FIRST SESSION

ON

S. 743

TO REDUCE CAMPAIGN EXPENDITURES IN FEDERAL ELECTIONS BY PROVIDING A STABLE, ADEQUATE DISCOUNT TO FEDERAL CANDIDATES FOR BROADCAST ADVERTISING TIME PRIOR TO AN ELECTION

S. 744 and S. 1009

TO AMEND SECTION 315 OF THE COMMUNICATIONS ACT OF 1934 WITH RESPECT TO THE PURCHASE OF BROADCASTING TIME BY CANDIDATES FOR PUBLIC OFFICE

AUGUST 2, 1989

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CAMPAIGN ADVERTISING ACT

WEDNESDAY, AUGUST 2, 1989

U.S. Senate,
Committee on Commerce, Science, and Transportation,
Subcommittee on Communications,
Washington, DC.

The subcommittee met, pursuant to notice, at 9 a.m. in room SR-253, Russell Senate Office Building, Hon. Daniel K. Inouye (chairman of the subcommittee) presiding.

Staff members assigned to this hearing: Toni Cook, Tom Cohen, staff counsels; and Gina Keeney, minority staff counsel.

OPENING STATEMENT BY SENATOR INOUYE

Senator Inouye. This morning we are here to examine the state of the lowest unit rate provision of the Communications Act and to consider three bills: S. 1009, authored by the Committee's ranking member, Senator Danforth, and S. 743 and S. 744, authored by Senator McConnell. All three bills are designed to accomplish the same goal—to ensure that candidates can obtain the lowest unit charge for campaign advertisements.

The Communications Act currently requires that candidates for political office be charged the lowest unit rate available for the class of advertisement they seek to purchase. The purpose of this requirement is to help ensure that the public has sufficient information upon which to base an electoral choice, while permitting fair value for the use of their facilities.

Recently there have been charges that in some campaigns the spirit and the letter of the lowest unit rate have not been followed for all candidates. It has also been alleged that the rates charged for political advertisements have varied widely from candidate to candidate.

The legislation before the committee is intended to resolve these concerns by only permitting broadcasters to charge candidates the lowest rate available for an advertisement during the time period requested and by prohibiting stations from preempting those ads.

We will hear today, hopefully from the author of S. 743 and S. 744, Senator McConnell. Thomas Goodgame of Westinghouse Broadcasting Co. will present the viewpoint of National Association of Broadcasters, Ms. Catherine Farrell and Ms. Jan Crawford will testify on the experiences in purchasing time for political candidates and I look forward to hearing from them.

I would like to advise the panel members that the committee is most grateful for your presence and the Senate in its wisdom stayed in session until ten to three this morning. I think it was rather foolish, and we are going to be having votes again at 10:30, so that is one of the reasons for the absences. I think some of my colleagues are still in slumberland, but the two of us are here.

Senator **Packwood**. Is that why our first witness is not here? Is he still in slumberland, Senator McConnell?

Senator **Inouye**. I believe so. Senator Packwood?

Senator **Packwood**. Mr. Chairman, good morning. I do not have any opening statement. I am looking forward to hearing from the witnesses.

Senator **Inouye**. Okay. Ordinarily, we would wait for the first witness, but if we do wait too long we would have to vacate this room at 10:30 and we will not be able to get back again, because we will be having a series of votes.

So if I may, may I call upon the president of Farrell Media, Inc., Miss Catherine Farrell, and thank you for coming here.

[The bills follow:]

101st CONGRESS
1st Session

S. 743

To reduce campaign expenditures in Federal elections by providing a stable, adequate discount to Federal candidates for broadcast advertising time prior to an election.

IN THE SENATE OF THE UNITED STATES

APRIL 11 (legislative day, JANUARY 3), 1989

Mr. McCONNELL introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

---

A BILL

To reduce campaign expenditures in Federal elections by providing a stable, adequate discount to Federal candidates for broadcast advertising time prior to an election.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Campaign Cost Reduction Act of 1989".

SEC. 2. Section 315 of title III of the Communications Act of 1934 (47 U.S.C. 315) is amended—

(1) in subsection (b), by striking everything after "shall not exceed—" and inserting in lieu thereof:

"(1) for candidates for any Federal office, during the forty-five days preceding the date of a primary or primary runoff election, and during the sixty days preceding the date of a general or special election in which such person is a candidate, the lowest unit charge of the station for the same amount of time for the same time period;

"(2) for candidates for any other public office, during the forty-five days preceding the date of a primary or primary runoff election, and during the sixty days preceding the date of a general or special election in which such person is a candidate, the lowest unit charge of the station for the same class and amount of time for the same time period; and

"(3) for candidates for any public office, at any other time, the charges made for comparable use of such station by other users thereof.".

(2) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively; and

(c) by inserting immediately after subsection (b) the following new subsection:

"(c) A licensee shall not preempt the use, during any period specified in subsection (b)(1), of a broadcasting station by a legally qualified candidate for Federal office who has purchased such use pursuant to the provisions of subsection (b)(1).".

EFFECTIVE DATE

SEC. 3. This Act and the amendments made by this Act shall become effective on the date of enactment.

○

II

101st CONGRESS
1st Session

S. 744

To amend section 315 of the Communications Act of 1934 with respect to the purchase of broadcasting time by candidates for public office.

IN THE SENATE OF THE UNITED STATES

April 11 (legislative day, January 3), 1989

Mr. McConnell introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

---

A BILL

To amend section 315 of the Communications Act of 1934 with respect to the purchase of broadcasting time by candidates for public office.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 315 of the Communications Act of 1934 (47 U.S.C. 315) is amended—

(1) in subsection (b)(1), by striking "class and";

(2) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively; and

(3) by inserting immediately after subsection (b) the following new subsection:

"(c) A licensee shall not preempt the use, during any period specified in subsection (b)(1), of a broadcasting station by a legally qualified candidate for public office who has purchased such use pursuant to the provisions of subsection (b)(1).".

○

II

101st CONGRESS
1st Session

S. 1009

To amend section 315 of the Communications Act of 1934 with respect to the purchase of broadcasting time by candidates for public office.

IN THE SENATE OF THE UNITED STATES

MAY 17 (legislative day, JANUARY 3), 1989

Mr. DANFORTH (for himself, Mr. HOLLINGS, Mr. INOUYE, Mr. BRYAN, and Mr. McCONNELL) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

---

A BILL

To amend section 315 of the Communications Act of 1934 with respect to the purchase of broadcasting time by candidates for public office.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Campaign Advertising Act".

SEC. 2. The Congress finds that—

(1) in the forty-five days preceding a primary, and in the sixty days preceding a general election, candidates for political office need to be able to buy, at the lowest unit charge, nonpreemptible advertising spots

from broadcast stations and cable television stations to ensure that their messages reach the intended audience and that the voting public has an opportunity to make informed decisions;

(2) since the Communications Act of 1934 was amended in 1972 to guarantee the lowest unit charge for candidates during these important preelection periods, the method by which advertising spots are sold in the broadcast and cable industries has changed significantly;

(3) changes in the method for selling advertising spots have made the interpretation and enforcement of the lowest unit charge provision difficult and complex;

(4) clarification and simplification of the lowest unit charge provision in the Communications Act of 1934 is necessary to ensure compliance with the original intent of the provision; and

(5) in granting discounts and setting charges for advertising time, broadcasters and cable operators shall treat candidates for political office at least as well as the most favored commercial advertisers.

SEC. 3. Section 315 of the Communications Act of 1934 (47 U.S.C. 315) is amended—

(1) in subsection (b)(1), by striking "class and";

(2) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively; and

(3) by inserting immediately after subsection (b) the following new subsection:

"(c) A licensee shall not preempt the use, during any period specified in subsection (b)(1), of a broadcasting station by a legally qualified candidate for public office who has purchased such use pursuant to the provisions of subsection (b)(1).".

○

STATEMENT OF CATHERINE FARRELL, PRESIDENT, FARRELL MEDIA, INC.

Ms. **Farrell**. Thank you for inviting me.

Any efforts by the Commerce Committee to regulate the pricing of political time will certainly receive rave reviews from me. Primarily my business is planning and placing broadcast media for political candidates and causes.

Because a plan cannot be executed if we elect to purchase preemptible time and costs skyrocket if we placed fixed time, we will support any legislation which would enable a candidate to purchase a fair amount of time at a fair price.

However, the most important part of this bill should be the ability of the regulating office to look at the records of a station to determine whether the lowest unit rate in fact is being provided.

At the present time, we all have the right to look at a station's records concerning political orders, but the FCC Fairness Division cannot look at the orders from a commercial advertiser. These, however, are the orders that determine the lowest unit rate for a political campaign. Without access to these records, the FCC has no way of knowing whether the law is being violated.

Years ago, the lowest unit charge regulations worked. That was before the stations were able to convince the FCC to change the regulations to allow different rates for different conditions, to change rates on a weekly basis, to ignore the portion of the law that calls for giving a candidate the lowest rate charged to any advertiser in the 45 days preceding a primary election and in the 60 days preceding a general election.

If this committee is able to retrieve the effectiveness of the regulations that originally governed political buying, I personally would be very happy.

Senator **Inouye**. May I ask a question at this point? When this lowest unit rate provision was adopted in 1972, broadcasters almost unanimously cried that they would lose a lot of money. Have they lost a lot of money since 1972?

Ms. **Farrell**. No, I do not believe they have. I mean, I cannot say. I am not a broadcaster. But I do not think they have lost any money on political advertising and I think each year, as they have been able to change the rule to make it noneffective, they have made more money.

Senator **Inouye**. Thank you. May I now call upon Mr. Levitt J. Pope, president of WPIX, Inc. of New York City?

STATEMENT OF LEAVITT J. POPE, PRESIDENT, WPIX, INC., NEW YORK CITY

Mr. **Pope**. Mr. Chairman, I would like to say as I appear before your subcommittee and I look at the other witnesses, that I feel kind of like Daniel in the lion's den.

As a broadcaster I know that nothing is closer to the hearts and minds of most Members of Congress and the Senate, including you all here today, than the cost of campaigns. I hope I will be able to contribute something helpful to that process.

I appreciate very much the opportunity to discuss the issue today of the lowest unit rate legislation. The National Association of

Broadcasters recognizes and acknowledges the important role broadcasters play in the political process and pledges its expertise to Congress in its campaign reform efforts. An informed electorate is our shared goal and responsibility.

In looking at this issue and the legislation which has been introduced, NAB believes that while the authors are certainly well-intended, the bills probably will not accomplish the basic goals which the proponents of such legislation share. These bills will not significantly reduce the amount spent by campaigns on broadcast advertising, nor are they needed to protect the candidates from problems in placement and selling of advertising time.

As the committee members know, stations currently charge what is known as the lowest unit rate for commercial advertising during the 60 days prior to the general election and 45 days prior to a primary.

An FCC ruling last August further clarified the application of the rule to so-called "grid card rates" by establishing the lowest unit rate as the price set for the least expensive preemptible spot to "clear" a given time period each week.

If a station initially charges more than the lowest unit rate, the candidate gets a rebate, and should a preemptible political spot be bumped, the candidate receives a "make-good" before the election, assuming the station gives "make-goods" to its regular advertisers.

This is a system designed to given candidates the same treatment by broadcasters as the station's most favored customers in the competitive marketplace. The bills being discussed here today would attempt to simplify this system further by removing so-called class distinctions between commercials and by making political commercials nonpreemptible.

This new system would give candidates nonpreemptible spots at the lowest unit rate a station sells during a given time period that week, but in practice, Mr. Chairman, the bills being considered go well beyond that and actually would give political candidates rates and placement that exceed those of the station's best customers.

In so doing, they would remove any sense of equality between the commercial marketplace and the buying of political advertising and grant candidates artificially low rates, with guaranteed protection against bumping.

Let me briefly explain why this legislation will not achieve the stated goals. First, while advertising costs are a significant part of overall campaign expenses, they are not the only cost. These bills do nothing to deal with higher mail costs, phone expenses, or the growing expense of political consultants. It is inappropriate for Congress to single out broadcasters as the cause of higher campaign costs, particularly when consultants who devise media strategies often work on commission and have a financial incentive to place more advertising.

Second, there is no way these bills can reduce the over all amount spent on media advertising merely by lowering the cost of each ad. On the contrary, we believe that candidates will end up buying more spots for the same price, thus negating the main purpose of the legislation.

Third, given this additional pressure on their inventory, stations ironically may end up having to limit overall availability of spots, in particular for State and local candidates, while they continue to provide reasonable access to Federal candidates.

As for the need to provide enhanced protection to candidates from alleged station bias, we know of no broadcasters who have used their time-selling process to favor one candidate over another. FCC regulations speak loudly and clearly that such behavior cannot be tolerated.

We agree and understand that any station that violates these rules is subject to FCC sanctions. Broadcasters are scrupulously neutral in their sale of ads to candidates and we see no reason to change the law in that regard.

Mr. Chairman, despite our misgivings, we sense Congress may attempt to move forward with some kind of lowest rate legislation. Accordingly, we have some changes we would like to propose that would lessen the impact on our industry.

First, we believe that such legislation should only apply to candidates for Federal office as in Senator McConnell's bill, S.743. The precedent for such limitation already exists in the reasonable access rules which Congress passed in 1972.

Second, we would ask that the committee narrow the current campaign window for such rates. We would like the period of time limited to 45 days prior to a general election and 30 days before a primary.

Third, we believe that candidates should be required to pay for a spot before it is considered preemptible. Such a provision would protect broadcasting from time buyers who book spots well in advance and then cancel them at the last minute. Such cancellations can mean the loss of revenue for an entire spot, or can force a station to submit substitute lower-priced ads which can then pull down the lowest unit rate for that week's time period, costing the station loss of additional revenue.

Fourth, we feel that the special, or nontypical rate such as bonus spots or make-goods or run-of-schedule or promotional spots should be exempted from inclusion in calculating the lowest unit rate for particular time periods.

Fifth, if a spot is bought on a program which itself is preempted or changed, such as when a sports event runs over or when a late-breaking news event occurs, there should not be any sanction against a station because of those unforeseen circumstances.

Finally, we suggest that candidates be required to appear in at least 50 percent of each of their commercials in order to qualify as a use by the candidate for the lowest unit rate. This Subcommittee has already considered legislation to address negative campaign tactics and we believe that encouraging candidates to appear in more of their ads may help to reduce this kind of campaigning, which is turning off more and more voters.

In closing, the problems of modern campaigns should not be laid at the broadcaster's door. We believe that merely reducing per-unit advertising costs will not achieve the goal of reducing overall campaign expenditures in any meaningful way.

We also believe that the current rules are workable and provide adequate enforcement. However, if the subcommittee is intent on moving forward with legislation, we ask that the changes we have spelled out here be adopted.

Again, thank you for the opportunity to appear here today before your committee on behalf of the broadcasting industry.

[The statement follows:]

STATEMENT OF LEAVITT J. POPE, PRESIDENT AND CEO, WPIX INC.

Thank you for the opportunity to testify today on the issue of lowest unit rate legislation. I am Leavitt J. Pope, President of WPIX Incorporated, New York, NY. I am also a member of the Television Board of Directors of the National Association of Broadcasters, and I am appearing today on behalf of NAB.

Mr. Chairman, there are two main reasons which the authors of proposed lowest unit rate legislation usually give for introducing such bills. First, they share a common concern about the growing cost of campaigns and the impact that may have on the American electoral process. And second, they are concerned about the possibility that stations may, through their time-selling practices, favor one candidate or another in the way they sell political advertising. The proponents of such bills hope that by making two basic changes to the current political advertising rules -- eliminating the term "class" in defining advertising buys and making all political spots non-preemptible -- they can both reduce the cost of advertising and can eliminate any perceived favoritism on the part of broadcasters.

Unfortunately, as NAB views these bills, we do not believe that these bills will achieve these desired goals, and in fact may create other unintended problems for broadcasters.

Under the current system, stations may only charge candidates what is known as the "lowest unit rate" for commercial advertising. During the 60 days prior to a general election or 45 days prior to a primary, candidates must receive the same benefits as the stations' most favored commercial advertisers, and are eligible for all discounts regardless of the number of spots they buy. Last August, the FCC issued a clarification of the application of these rules to so-called "grid card rates" and related market-based pricing mechanisms by establishing the lowest unit rate as the price set for the least-expensive spot to "clear" a given time period each week. If a station initially sells time at a rate higher than what becomes the lowest unit rate for a particular week, the station must rebate the difference. In addition, the FCC requires that if a candidate's spot is bumped, the station must provide a "make good" spot prior to the election if it provides similar protection for its commercial customers.

In practice, candidates and their time-buyers must decide if they want to buy fixed spots at higher rates, or buy lower-priced preemptible spots in order to get more advertising for their dollar. Since most TV stations and many larger radio stations now use a "grid card" which likens the purchase to an auction, candidates face a more complicated decision in determining their ad purchases, but one that remains fair and reasonable, in our view.

The intent of the bills being discussed here today is to simplify this system by getting rid of "class" distinctions between commercials and by making political commercials non-preemptible. These bills would, in essence, replace the grid system for political advertisers, and would guarantee that candidates get the lowest unit rate on all spots run in a given time period without worrying about being bumped.

We at NAB have several serious concerns about whether such changes would achieve the goals their proponents profess. Let me begin with the issue of reducing campaign costs.

In preliminary results of a new survey done for NAB by Aristotle Industries (which we will provide for the record upon completion), campaign spending for media and for specific radio and TV time in the 1988 congressional elections averaged 43.5 percent for Senate races and 19.8 percent for House races. Those figures do not include production costs, the time-buyer's fees, or other related costs which are sometimes lumped into the overall cost of advertising. Clearly, in large states with major media markets or in particularly competitive races, those figures could be higher. In smaller, rural states or where there are less competitive races, the figures could be lower.

But as this committee knows, advertising is only one component of a campaign's expenses. The real reasons that costs for campaigns have gone up in recent years are many and varied -- travel costs are higher, telephone charges have increased, direct mail and polling costs have risen. Yet the proposed legislation does not deal with any of these other factors which have a significant impact on total campaign expenditures.

In addition, another factor is the growing emergence and involvement of political consultants. Working for a percentage of the media "buy" for a campaign, these consultants shape the way in which many campaigns are run. But some political experts believe this system provides a financial incentive to spend more on broadcast advertising and less on methods that involve people in the political process, such as phone banks. In an article last fall in the Christian Science Monitor, University of Virginia scholar Larry Sabato is quoted describing political consulting as "a gold mine, an absolute gold mine."[1] The article pointed out that consultants often receive a 15 percent commission on political ads, and said for a 30-second spot on "60 Minutes" in New York City, that commission would be $6,000 for one spot. The article also quotes Matt Reese, a former political consultant now at the Kennedy Institute of Politics, as saying that, "A person's greed and self-interest get in the way of the campaign."[2] I have attached a copy of the entire article for the record.

Let me re-emphasize that under current law, candidates can buy preemptible spots consistent with the treatment given a station's most favored commercial advertisers. But the bills being considered go well beyond that, and actually would give political candidates rates and placement that exceed that of a station's best customers. In so doing, they would remove any sense of reality between the commercial marketplace and the buying of political advertising, and give candidates artificially low rates with guaranteed protection against bumping.

The irony is that by securing an even lower lowest-unit-rate than currently exists, these bills may encourage even more time buying. If consultants and candidates can now buy three spots for the price of two, who could resist the chance to buy three? The campaign gets more air time and the consultant's commission remains the same. Thus, the goal of reducing the amount spent on advertising will not be achieved.

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[1] Jonathan Rowe, "For Media Consultants, Politics is a Gold Mine," Christian Science Monitor, October 28, 1988, pp. 1-4.

[2] Id.

As to the alleged problem of protecting candidates from station bias, we believe that current rules and statutes already protect candidates from such practices. I know of no broadcaster who has used his station's time-selling process to favor one candidate over another. If such an event occurs, I believe that station deserves whatever penalty the FCC chooses. I think you will find that as a class, broadcasters are scrupulously neutral in their handling of political advertising because they realize their public responsibility to offer and sell time fairly to all candidates for elective office. We simply do not want to put our licenses in jeopardy. There is a no need, as we see it, for a change in calculating the lowest unit rate charges in order to prevent such "abuses."

There are other negative side-effects to these bills which concern us. A survey of the 1988 elections by the Television Advertising Bureau shows that nearly two-thirds of all political advertising ran in the fourth quarter of that year, when stations often have great demand for spots. The fourth quarter is when the new fall TV season has just kicked off, and also Christmas holiday advertising peaks. Thus, legislation which increases the demand for campaign commercials will put even more pressure on broadcasters' ad inventories and could adversely affect voters by leading to oversaturation of the airwaves.

As a result, an unintended consequence of these bills could be that stations might try to limit the amount of time they are willing to sell to all candidates, particularly state and local, while maintaining "reasonable access" for federal candidates as the Communications Act requires. Ironically, if these bills pass, we could actually see stations deciding to make fewer availabilities for candidates' spots.

Mr. Chairman, despite these problems, we sense that Congress is intent upon enacting some kind of new lowest unit rate legislation, along the lines of the bills being discussed. Accordingly, we have some changes we would like to propose that would lessen the negative impact of this legislation on broadcasters.

First, we believe such legislation should only apply to candidates for federal office. One of Senator McConnell's bills, S. 743, takes this approach. There is precedent for restricting certain political broadcasting laws to federal candidates, as demonstrated by Section 312 (a) (7) of the Communications Act. This "reasonable access" rule, passed by Congress in 1972, only applies to federal candidates. We believe that further radical changes in candidate advertising rules should be limited to federal elections only, since that is also the main purview of the Congress.

Second, we also ask the committee to consider narrowing the campaign "window" for such lower rates. Under current law, the lowest unit rate rule applies during the 60 days prior to a general election and 45 days before primaries. We would suggest that this window be narrowed to 45 days prior to a general election and 30 days before a primary, since that it when political advertising usually peaks.

Third, since the legislation would prohibit stations from preempting political spots, we suggest it also provide that all political spots be considered preemptible until they are paid for. In other words, a candidate's spot would not become fixed until payment is received. This will provide a needed measure of protection for broadcasters against time buyers who book spots well in advance of their broadcast. If what will now be fixed ad time for a station is allowed to be cancelled by the candidate at the last minute, a station can lose that ad availability entirely. Or if the station substitutes a run-of-schedule spot at much lower rates in its place, that spot can then be unfairly counted as the lowest unit rate for that time period, costing the broadcaster even further revenue.

Fourth, we believe that in calculating the lowest unit charge for a particular time period, such special or non-typical rates as bonus spots, "make goods," run-of-schedule or promotional spots not be included. These rates are clearly outside the normal range of advertising rates for stations and would drastically skew the lowest unit charges. Broadcasters should be allowed to simply sell to candidates out of the available inventory for a particular program during the week and review the logs the next week to see if any spot aired at a lower preemptible rate. If so, a rebate for the difference would be owed the candidate. Thus, in exchange for providing fixed spots, stations would receive some relief from the complexity of application and the burden of tracking rates. Using special rates, such as run-of-schedule, to set lowest unit rates under this new scheme would not be fair to stations.

Fifth, if a spot is bought on a program which itself is later preempted or changed, there should be no sanction against a station because of that unforeseen circumstance. The most obvious situation is that of sporting events which run over their allotted time period, or when programs are cancelled because of late-breaking news coverage. In the case where an entire program following such an event is wiped out by the previous program, stations should not be sanctioned for preempting candidates' spots which were bought in the preempted program.

Lastly, we would suggest that candidates be required to appear in at least 50 percent of each of their commercials in order to qualify as a "use," and thus be eligible for lowest unit rates. The current appearance rules allow candidates to do nothing more than air a one-line tag or a tiny photograph at the end of the commercial. This subcommittee already has considered legislation on negative campaigning tactics. We believe that encouraging candidates to appear in more of their ads may help reduce the kind of campaigning which increasingly is turning off the American public.

In closing, let me say again that we believe that the problems of modern campaigns cannot be laid at the broadcasters' door. There are many, many factors which have led to increased campaign spending, not the least of which is the huge amount many campaigns spend on consultants and other expenditures. Indeed, if Congress wants to regulate broadcast advertising rates, why not also regulate postal charges, telephone bills, airline travel, or any other costs which also arguably are subject to federal regulation? I remind the committee that broadcasters are merely a conduit for candidates who choose to campaign largely through radio and television spots. To assume that reducing advertising costs will dramatically reduce campaign spending is to blame the messenger for the number of messages.

We believe the current system works by already giving candidates lowest unit rates and by strongly enforcing existing laws against discrimination by stations against candidates. We hope the committee will reject these bills. However, if legislation is moved, we would ask that the changes I have spelled out here be adopted. NAB would be happy to discuss these ideas in more detail with members of the subcommittee.

I again thank the committee for the opportunity to appear here today on behalf of the broadcast industry.

Senator **Inouye**. I thank you very much. Mr. Pope. Now, may I call upon the president of Jan Crawford & Associates of Washington? Miss Jan Crawford.

STATEMENT OF JAN CRAWFORD, PRESIDENT, JAN CRAWFORD & ASSOCIATES, INC.

Ms. **Crawford**. Thank you, Mr. Chairman.

I have been a political consultant for 19 years. I currently serve on the board of the American Association of Political Consultants. Over the course of nearly two decades I have been witness to enormous change in the importance and influence of the broadcast media in the election process and how the FCC's broadcast deregulation in this area has indeed affected that very process.

Mr. Chairman, thank you for the opportunity to be here today in support of this legislation. In 1970, when I first became a consultant, the use of media in political campaigns had not attained the stature it has achieved today. It was a much simpler time.

In today's world, the use of paid broadcast media in political campaigns has taken a whole life of its own. Most, if not all, the information the American voter receives about a candidate comes from television and radio.

Broadcast media legitimize a candidacy. It has been estimated that from 50 to 60 percent of the budget allocated for a run for Federal office in a contested race will go toward buying political broadcast time. In my experience, in some races it has been closer to 80 percent. The cost of campaigns for Federal office is skyrocketing and these costs are in direct correlation to the cost of broadcast time.

I can state unequivocally that this legislation is needed now more than ever. The intention of the Congress was quite clear when in 1972 it amended section 315 of the Communications Act to include that political candidates were to be treated the same as the most favored commercial client. Stations sold time to political candidates at the lowest unit charge and in my experience from their published rate cards and did not preempt them.

For Richard Lamm's first race for Governor of Colorado in 1974, I spent a total of $85,000. That was for a three-way primary, a general election, statewide radio and television. In contrast, 12 years later, I spent $1.5 million on another statewide race in Colorado—Representative Tim Wirth's successful run for a U.S. Senate seat. Spots had to be purchased at the fixed rate to ensure that they would run.

Many broadcasters have found ways to whittle away at the understanding derived from the 1972 changes, due to the increased political competition for air time. How can we account for a 1700 percent increase and how do the broadcasters justify this increase? For the sake of time, I will highlight a few of the many reasons which are detailed in my written testimony.

First, costs are now determined by what the market can bear.

Second, political advertising is the fastest-growing portion of the broadcast television industry.

Third, commercial advertisers very rarely pay the fixed rates. That honor goes to the political candidates, who must have spots run within political rate periods and in specific programs and day parts.

Fourth, last year's attempt by the FCC to ensure that makegoods would run prior to election day was a fiasco. Democratic candidates were preempting other democratic candidates, and I think I can speak for Cathy, that was the same on the Republican side.

In conclusion, I would like to reiterate my support for this legislation, but just as important is the fact that if indeed this legislation, or one similar to it, is enacted into law, I would hope that it be succinct and clear, leaving no room for interpretation by various parties. Otherwise, Mr. Chairman, we will be returning to this hearing room following the 1990 elections.

Thank you.

[The statement follows:]

STATEMENT OF JAN Z. CRAWFORD, PRESIDENT, JAN CRAWFORD & ASSOCIATES, INC.

Mr. Chairman, my name is Jan Ziska Crawford and I have been a political consultant for nineteen years. I currently serve on the Board of the AMERICAN ASSOCIATION OF POLITICAL CONSULTANTS. Over the course of nearly two decades I have been witness to enormous change in the importance and influence of paid broadcast media in the election process and how the FCC's broadcast deregulation in this area has indeed, affected that very process. Mr. Chairman, thank you for the opportunity to speak to you today in support of S. 1009, S. 743 and S. 744

In 1970 the use of media in political campaigns had not attained the stature it has achieved today. There were very few media consultants. Those innovators -- Bob Squier, Tony Schwartz and Robert Goodman -- served on the creative side rather than on the time purchasing side. It was a simpler time. A vast majority of the political campaign budget was allocated to field organization, phone banks, direct mail, and promotions like billboards, leaflets, bumper stickers and campaign buttons.

Today, the use of paid broadcast media in political campaigns has taken on a life of its own. Most, if not all, the information the American voter receives about a candidate is derived from television and radio. Broadcast media "legitimizes" a candidacy. It has been estimated in recent years that 50 to 60 percent of the budget allocated for a run for federal office, in a contested race, will go towards buying political broadcast time. It is expected that this percentage will continue to rise steadily as voter participation in the electoral process dwindles and campaigns struggle to get their messages across.

The cost of campaigns for federal office is skyrocketing and these costs are in direct correlation to the cost of broadcast time. I can state unequivocally that this legislation is needed now more than ever.

Over the years I have worked on over 100 campaigns for elective office purchasing broadcast time for local school boards and candidates for the Presidency of the United States. Prior to becoming involved in politics, for two years I worked for the TV sales department at WMAQ-TV (NBC) in Chicago. In the intervening years I have consulted with commercial advertising firms including J.W. THOMPSON, INC., EARLE PALMER BROWN, and NEEDHAM HARPER & STEERS. I believe my diverse background enables me to bring additional insights to the discussion from a variety of perspectives.

I have seen first hand how advertising rate structures have changed and, in a few instances, in particular markets, I have known what the political rate should be (because I was negotiating the commercial rate in the same markets) and what was actually presented as accurate.

"LOWEST UNIT CHARGE"

At WMAQ-TV and in 1970 when I first began in the political consulting business, there were basically three rates:

1) Preemptible without notice;
2) Preemptible with two weeks notice; and
3) Fixed.

If the rates differed, this was due to what I will term "most favored client" negotiating. Those included, and still do, large corporate advertisers such as Bristol Myers, Proctor and Gamble and McDonalds. In addition, for many stations around the country, printed rate cards existed.

The intention of the Congress was quite clear when in 1972 it amended Section 315 to include that political candidates, both federal and non-federal, were to be treated the same as the most favored commercial client. Stations sold time to political candidates at the "lowest unit charge" on their published rate card and did not preempt them.

For Richard Lamm's first race for Governor of Colorado in 1974 I spent $35,000 in the primary and $50,000 in the general. A three-way primary and a statewide general election for a total of $85,000! In contrast, 12 years later, I spent $1.5 million on another statewide race in Colorado -- Representative Tim Wirth's successful run for a seat in the U.S. Senate. Spots had to be purchased at the fixed rate to ensure that they would run. Many broadcasters have found ways to whittle away at that understanding due to the increased political competition for air time.

How can we account for a 1700 % increase? And how do the broadcasters justify this increase?

Television viewership has been decreasing. But political advertising has been increasing dramatically and political advertising is the fastest growing portion of the broadcast television advertising pie. Unlike its commercial counterparts, political advertising placement is like a three-dimensional chess game, comprised of intricate moves and subtle strategies, the clock ticking away towards the election day deadline. It is imperative that campaign spots air within the political rate periods and within specific programs or dayparts as well. Ultimately, this means, that under current FCC regulations, political candidates must pay fixed rates if the desired game plan is to move forward.

Over the last several election cycles a new term has emerged in the television industry. The term is "effective selling level". Rather than a fixed rate card which is in effect throughout a quarter -- costs are now determined by what the market can bear. Today candidates for public office are in direct competition with commercial advertisers for the available air time giving rise to an entirely new interpretation of "The Selling of the President."

Commercial advertisers rarely, if ever, pay the fixed rate. The preemptible rate, or the best negotiated rate, is normally what is charged. It is highly unlikely that a "most-favored" client would be preempted. The broadcast station is well aware of the monies generated by a major commercial client. And is less reticent to "bump" a smaller advertiser paying a higher rate than one whose consistent patronage requires more attention.

Thirty and sixty second spots are the name of the game. This is where the stations make their money. There has been much discussion over the use of longer commercials or programs. Let me state that the stations do not want to sell longer length commercials to politicals. It is more cost effective to the campaigns. A five minute program does not cost the same as five times the thirty second spot rate. Over the years I have requested many five minute and half-hour slots. The answers have been varied but lead to the same conclusion -- the television industry does not want to sell program time to candidates. Examples of times offered are 5:55AM, 12:30AM or 2AM at the end of the broadcast day. Some stations will offer daytime and weekend but in my 19 years of experience I have never been offered a five minute in prime time.

A more interesting example in a 1988 House of Representatives race. In this particular market the CBS affiliate was contacted regarding five minute availabilities as were the other stations. Times and costs were given orally.

When I went to purchase the five minutes I was told that they were only offering half-hours. The five minute was already produced and ready to air. We found this situation most interesting because, as we pointed out to the station in writing (with a copy to the FCC) that it was only after I informed them on whose behalf I was purchasing the time that a problem arose. Our opponent had been a commentator on that station. Needless to say, I was able to purchase the time.

In August, 1988 the FCC issued a Public Notice attempting to meet the changes occurring in a more free market broadcasting industry. The FCC stated that " a 'make good' is an offer by the station to air or 'make good' an advertiser's preempted spot at another, usually later date, in the same daypart as originally purchased, rather than make a refund to the advertiser. These 'make goods' typically air within the time frame applicable to the advertiser's schedule." They then conclude this section with the following:

"Since Congress enacted the lowest unit charge requirement to ensure that candidates are treated as favorably as the most favored commercial advertisers during the pre-election period, the Commission concludes that 'make good's for political spots must air before the election where the licensee would so treat its most favored commercial advertiser when time is of the essence."

I beg to differ with my friends at the FCC but it is very rare that "make goods' are run in the same daypart as originally purchased. My experience over the years has been that a station will offer two spots for the original one. This is because commercial agencies buy on gross rating points rather than target specific audience requirements. For example, in last year's elections one of our clients insisted that we purchase as much time as possible on preemptible (with some assurance that the spots would run). Working with stations that we have worked with for nineteen years we were able to achieve some success of guarantee. However, two weeks prior to the general election one of our prime time spots was threatened with preemption. This was a premier of a new program with older demographics. As we all know, the older voters vote more consistently. The commercial to be aired in that time slot was geared towards an older audience. Before relaying the information to the client, we requested what "make good" they would offer us and if necessary to hold the original spot, the fixed rate. We were offered a two for one "make good" -- a news and a soap opera. In our thinking, and ultimately the campaign's, not an equivalent spot. We and the campaign agreed to pay the fixed political rate.

Another problem arose out of this ruling. For the most part in the last two weeks of the election cycle those doing the preempting were either the Presidential candidates, the respective national parties or PACS. All of which were purchasing time at the fixed level. In other words, many Democratic incumbents and challengers found themselves being preempted by their own party or supportive PACS. The same is true on the Republican side.

In conclusion I would like to reiterate my support for this legislation. But, as important, is the fact that if indeed this legislation or one similar is enacted into law, I would hope that it be succinct and clear, leaving no room for interpretation by various parties. Otherwise, Mr. Chairman, we will be returning to this hearing room following the 1990 elections. Thank you. I would be happy to answer any questions.

Senator INOUYE. Thank you very much, Miss Crawford. May I now call upon the author of S. 1009, our ranking member, Senator Danforth?

Senator DANFORTH. This is for questions?

Senator INOUYE. For your statement, your questions, anything you wish.

Senator DANFORTH. Thank you very much.

I want to thank the panel for being here. I do not know if Senator McConnell is going to be able to get here this morning, but I hope he is because I very much wanted to hear from him.

Senator Hollings and I were working on legislation. Senator McConnell was working on virtually identical legislation at the same time. It was comparable to scientists pursuing the same objective at the same time. Senator McConnell has certainly been very instrumental in this whole effort.

Let me see if I can further our understanding of what the issue is. Mr. Pope, as I understand it, television stations charge different rates for preemptible and nonpreemptible time. Is that right?

Mr. POPE. Yes, sir.

Senator DANFORTH. Nonpreemptible time means spots that cannot be bumped. Nonpreemptible time is more expensive than preemptible time?

Mr. POPE. That is right, sir, but in fact hardly anybody that buys television buys nonpreemptible time any more.

Senator DANFORTH. Okay. I do want to pursue that, but first I want to get at the price differential. If you buy nonpreemptible time, it is considerably more expensive. Is that not right?

Mr. POPE. Yes, it would be.

Senator DANFORTH. It could be many times as expensive, a multiple?

Mr. POPE. Well, that is why hardly anybody buys strictly nonpreemptible time.

Senator **Danforth**. I know, but I am just trying to establish what the factual situation is. It can be many times as expensive, can it not? Three, four or five times more expensive to buy nonpreemptible time than to buy preemptible time?

Mr. **Pope**. If I could just change the language a little, so that it is the real world that I live in?

Senator **Danforth**. Sure.

Mr. **Pope**. An advertiser that pays a higher rate for a spot in a show is less likely to be preempted than one who spends the lowest rate, because we take the highest rate advertisers and keep them and the lowest rate ones get bumped out.

Senator **Danforth**. Right. So a person who wants to be sure that his or her ad is going to be run may spend many times what a person would spend if that person was satisfied with the possibility of being bumped and having the spot run at some later date. Right?

Mr. **Pope**. Well, in any one program the difference might be as much as double from the highest rate to the lowest rate.

Senator **Danforth**. I am told it could be much more than doubled. Either Miss Crawford or Miss Farrell know what the differential is between preemptible and nonpreemptible, roughly, in percentages?

Ms. **Farrell**. It could be five times. Five times the preemptible, easily.

Senator **Danforth**. Easily five times?

Ms. **Farrell**. In a lot of cases it is. Sometimes it is two times. Sometimes it is three.

Senator **Danforth**. What would you say, Miss Crawford?

Ms. **Crawford**. I think the average is probably about three to three and a half times.

Senator **Danforth**. Three to three and a half times as expensive if you want to make sure you are not going to be bumped?

Ms. **Crawford**. Exactly.

Senator **Danforth**. Now, Mr. Pope, you said that very little nonpreemptible time is sold by stations in practice. Would you elaborate on that, please?

Mr. **Pope**. In the television business, in our market, sir, there really are not any rate cards any more. We are in a kind of commodities exchange and every day people bid for advertising on our stations and those that pay the highest price get their spots cleared and those—if we are sold out, that do not pay the highest price get preempted and then get replaced in another show at whatever rate they choose to pay.

Senator **Danforth**. But a person who wants to buy time when that person does not care whether he is preempted or not, would pay, as we have just established, a fraction—maybe a third or less, a quarter or less—of what somebody who absolutely had to appear.

What I am talking about is, how frequent is it that you sell advertising to a commercial advertiser who must not be preempted and therefore is willing to spend top dollar?

Mr. **Pope**. Well, that is a pretty unusual situation. I would say the closest parallel we have on a regular basis is the movie companies who want to get their commercials run on Thursday, Friday, and Saturday, prior to weekends. They regularly pay a higher rate when they come in on each week, or every second week, on Wednesday and Thursday.

Senator **Danforth**. Let us say Anheuser-Busch or Coca-Cola, if they were buying time, would they typically buy preemptible or nonpreemptible time?

Mr. **Pope**. Well it depends what they are buying. With Budweiser buying sponsorship of the New York Yankees, that is a negotiated rate for the whole season and that generally is not preempted because we do not sell out baseball, so we do not really have the problem of bumping there. If Coca-Cola buys spots, they buy it just like anybody else does.

Senator **Danforth**. It would be very rare, would it not, if they would buy nonpreemptible time?

Mr. **Pope**. Yes, except that they generally want to make sure that their spots run and deliver the number of gross rating points per week which their plan calls for so that when they negotiate a price with our sales people they generally pay a price that is high enough so that their chance of being preempted is very small.

Senator **Danforth**. Is it discretionary with a station, whether or not to preempt an ad?

Mr. **Pope**. There is a certain amount of discretion, but normally we try to treat all of our sponsors or advertisers fairly and equally.

Senator **Danforth**. Let us say that at your station I came in and I said look, I want to buy a week's worth of advertising for a garage sale that I am going to have and then I am going out of business and you will never see me again and I know that General Motors has bought this time from you, but I am willing to spend 50 percent more than General Motors if you will bump them. Would you have discretion to say no, General Motors is a regular customer of ours?

Mr. **Pope**. We would certainly have that discretion, sir, but we generally would not operate in that way.

Senator **Danforth**. But it would be a matter of discretion, correct?

Mr. **Pope**. There are no specific rules that I know of about rates other than for candidates, but that is not the way stations operate. We are there to make the most money every day that we operate, if we can.

Senator **Danforth**. Now, let me ask Ms. Crawford and Ms. Farrell this question. In your judgment, is a political advertiser in the same position as a commercial advertiser with respect to the decision of whether to buy preemptible or nonpreemptible time, or is a political advertiser in a different position because of: a) the fixed date of a political campaign, and the fact that advertising that is made available after the election is about as useful as yesterday's newspaper, and, secondly, the need for politicians in this day and age of the fast hit and counterpunch political campaigns to be on the air immediately and to be able to respond immediately to charges that have been made?

Ms. **Crawford**. Political advertisers are not in the same position as commercial advertisers. We have to be sure that our candidates are on the air in certain programs and in certain day parts because of the election, and to ensure that, you have to pay fixed rates.

We had an experience last year where the Democratic nominee for President was preempting, because his campaign was paying fixed rates. They were preempting incumbent Democratic members of Congress who had opted to pay the preemptive. I never would advise my candidates to pay preemptible. I think your job is on the line, and it is very, very important that spots air in the selected programs. Money is hard to come by and you work hard to raise it. I believe when you have a strategy and a game plan it must be executed.

Senator **Danforth**. So the political candidate must buy, in your professional judgment, nonpreemptible time, and further, in your estimate, the cost of nonpreemptible time is perhaps three and a half times the cost of preemptible time?

Ms. **Crawford**. Yes, Senator.

Senator **Danforth**. Ms. Farrell.

Ms. **Farrell**. I agree with Jan. What happens is you set a plan for a candidate; say you are going to buy them 500 points a week or 600 or whatever. And if you try to buy it on preemptible, if the market is good, and it is not tight, and it is early, you might be able to get away with it.

But what happens is the station has the right to bump your spot without telling you, so at the end of the week you might not have run the 500 points; you might have run 300 points. And this is a problem.

Now, what I do is I argue with the stations that I am placing it at preemptible, but you had better tell me if you are going to bump it. And so it does not take them very long to get used to that routine, and so they come right away as you are placing it, and they will start off, say, taking 50 percent at preemptible and 50 percent at fixed of the order, and then each week it will get less until when you are at the end of the campaign, or way before that, 2 weeks before or three weeks before, you are playing 100 percent fixed.

Senator **Danforth**. One hundred percent nonpreemptible.

Ms. **Farrell**. Right. Top dollar. And I am talking about a spot going from $80 to $400 in 1 week. I mean, this is not uncommon.

Senator **Danforth**. Would you give us some more examples of that, because I think that really shows us exactly the real world.

Ms. **Farrell**. That is one big example that happened this year. A "Good Morning, America" spot on a station went from $80 to $400 in a week, and there was no arguing with them. They said we have nothing else, that is it; take it or leave it. And they knew we wanted the "Good Morning, America" spot.

I had another situation where a station said our late news is $800, and I said what, your late news is $800; the going rate in the market is between $200 and $250 for late news.

And he said not for political time, and I said what are you talking about. He said well, we set aside a special spot for political candidates in the late news. The spot they set aside is the last spot in the news, 11:28 p.m., which is very nice of them, and that spot they do not sell to anyone else; they only sell to political candidates at $800.

And that station refused to let us buy a late news spot between 11 and 11:28 where all the other commercial advertisers were for between $200 and $250. They blocked us out of the news.

I mean, those are just two examples of what goes on, but there are all kinds of tricks that go on in a campaign.

Senator **Danforth**. Well, would you tell us about them?

Ms. **Farrell**. Tell you more?

Senator **Danforth**. Yes. That is the purpose of the hearing, to gather this kind of information.

Ms. **Farrell**. I had situations on a candidate this year where after all the bills were paid and reconciled and everything, we get a statement from a station that says we have a $5,000 credit. And I called them up, and I said what is this credit for; we matched all your affidavits and what we paid you. Well, we found out you were not paying the lowest unit rate, so we changed the rates.

Now, this is 3 to 4 months after the campaign is over. They knew what the lowest unit rates were the week that we were placing, but someone in their legal department said you had better give back that money. By the way, this station sends us a statement every month saying that we have a $5,000 credit, and I called them up and I said would you send the check so I can give it back to the client, and they said oh, yes. They told me 2 months ago they would send the check. I still have not gotten the check.

I mean, that happened on about five stations. They lowered their rates considerably after everything was over.

Now, if the candidate had lost and he was getting back this money, you know, and he needed that money to spend it somewhere else, it would have been, you know—they would have been pretty unhappy. But in this case the candidates all had won, so it did not matter. I mean, that was not a problem.

But it is not the way to operate. Stations know what their lowest unit rate is, and they do not quote it to us for lots of reasons.

Ms. **Crawford**. Last year I had a candidate, an incumbent, who opted to buy some time at preemptible, and one of the spots was a prime time premiere program which we bought for, I believe, it was $800. About a week prior to its airing, we were told the rate was at least double if we wanted to remain in that program, and I asked what the make-good would be, and I was offered a news program and a soap opera.

It is not an equivalent make-good. That is part of the fiasco that happened with the FCC's public notice last year. Generally, make-goods are not offered with the same demographic criteria as the original program purchased. Political candidates do not—you do not normally just look at gross rating points as do commercial advertisers. You look at pockets of the electorate who you need to get your message to.

That is what Cathy and I do. That is what our expertise is, targeting those individual voters. So we have certain reasons why we pick certain programs. That is why I do not buy ROS, run of station, or best time available, whether it be on television or radio if it is offered, because you need to know who you are reaching; you want to deliver a specific message.

Senator **Danforth**. Could I ask one more question, Mr. Chairman?

Senator **Inouye**. Please do.

Senator **Danforth**. I want to build on Mr. Pope's statement that the station has discretion, although I take it it is illegal to discriminate overtly against one candidate in favor of another. But let me just give you, I guess, sort of a worst case situation, and ask you if you think that the possibility for abuse exists.

Let us say that I am a station manager or the advertising salesperson at a television station, and say that I am a deeply committed Republican and strongly believe in my candidate, who is a candidate for the U.S. Senate. And there is a hotly contested race for the Senate, and both candidates are scrambling around to get money for their campaigns.

And my favorite candidate comes to me and says I want to buy time on such and such a program. And I say fine, buy time at the preemptible rate, and I do not think you are going to be preempted. And the opponent comes in and says I want to buy time with the same program, and you say well, we can sell you either preemptible time or nonpreemptible time. If we sell you preemptible time, maybe it will be shown; it is possible, theoretically, that it will be shown. So take your choice. You can throw the dice. If you want to guarantee you are going to be on the air, I think you should buy—you might consider buying the nonpreemptible time at 3X instead of the preemptible time at X. But, of course, it is your decision.

Now, would it be possible to easily abuse this system just by holding out to the candidate or the candidate's time buyer the possibility of safety and security of buying the preemptible time versus the possibility of losing everything by buying nonpreemptible time? Is it a very, very easy system to abuse?

Ms. **Farrell**. It is. I have had it happen in a race where this happened to me. We paid the fixed time. We sent representatives of the campaign into each of the stations in the market to make copies of the other candidate's orders, and it was a large market, and five stations in the market had given the other candidate lower rates than ours.

What we did was we added up the difference, and we went to the stations and told them you refund the money immediately, or we will take our spots off the air for good. And four of the stations said yes; one of them fought it. But with a little more pressure, they all sent back the money instantly.

I mean, the one thing we have—but if you are handling a presidential campaign and a lot of senatorial campaigns, you have problems sending people to every station across the country to check what the opposition is doing. But we do have the right to do that if we have a large enough—or if the campaigns have volunteers in their States to help you do this and fax you copies of other people's orders, you'll find a lot of differences.

Senator **Danforth**. Ms. Crawford.

Ms. **Crawford**. I would say it is very possible, and I think it sometimes happens even in the commercial world, I think, where you have a McDonald's or a Procter & Gamble negotiating long-term contracts with the station; they are not going to be preempted. I think the smaller advertiser who has paid a higher rate but is still considered preemptible would be the one that would be preempted. And I have had station managers tell me that.

We have started working with the reps over the last several years, because they are consistent, and they know the law. What is happening now is at many stations around the country—and I think it is part of this problem—is there are really very few broadcasters. Station people do not understand the laws. They do not understand why you should not do tradeout deals. When calculating lowest unit rate these tradeouts will help determine this rate.

I mean, it becomes very, very complicated, and many people are moving from station to station each year. And at least if you deal with the representatives, you are dealing with people who understand the law, who can tell them this is how it must be done, discuss things with their stations, and make sure when we are told that preemptible spots will most probably run that they will run.

Mr. POPE. May I respond further, Senator, about that? These are obviously very capable people who are testifying here before you this morning, and I really apologize for having to take issue with some of the things that have been said.

In any campaign there are all kinds of hectic things that happen on both sides of all issues that all of us know about that should not happen. What I have testified here is that we believe that the machinery that is already in place does work, and we have had many instances of differences that occur, through human error or through misunderstandings, that somehow get fixed.

When you are dealing with smart people like David Garth or the other people who are experts at this process, there is a lot of give and take, there are a lot of issues that come up that get resolved. And in the real world, even though you have heard some of the horror stories, we have a steady stream of people coming into our office every day looking at our public files and our political files particularly.

Everybody knows what rate everybody is paying. The very smart people that do buy for campaigns are on top of it, particularly in big markets like we happen to be in.

And my belief is that broadcasters are very aware of their responsibilities. We do not favor individual candidates. We deliberately do not editorialize in favor of political candidates for that reason.

We live in a world where we are going to be operating when people come and go in political office, and we do not pick them individually.

Senator DANFORTH. I am sure, Mr. Pope, that most broadcasters are very honest and objective, and I do not want to leave any other impression. But I think that the possibility of abuse is there, and that was the point I want to make.

I am also told, I must say, by both stations and by lawyers who represent them that the present system is a legal quagmire, and that the FCC in the 2 or 3 months before an election is inundated by dozens of calls from lawyers and stations every day asking for legal interpretations of this terribly confused law that we now have. So my understanding from those that I have talked to is that far from being a system that works, this is a system which is so obscure and so difficult to understand that it keeps teams of lawyers busy for weeks and for months. And, if this is true, clearly a system which requires complex and continuing legal interpretations of the current status of the law is a system which is not working very well and which is subject to misinterpretation and to abuse.

Mr. POPE. You could also say, Senator, that the system is working and there are sanctions against broadcasters who violate it. And that is why we make sure that when any questionable thing comes up, we do seek the best advice we can, both from the FCC and from our own counsel, because none of us want to risk what would happen if we do not comply with the law.

Senator DANFORTH. Mr. Chairman, you have been very generous with your time. I want to thank all three members of the panel for their participation. And I am glad that the father of this effort, Senator McConnell, is now with us.

I would only want to add that we talk so much about campaign reform, and we seem to have gotten bogged down in a couple of very strong philosophical disputes between Republicans and Democrats in the Senate on campaign reform. But to me, this is probably the most significant campaign reform issue that is before us now, and it is an issue on which there is no partisan difference. And to me, this significant campaign reform legislation can be passed this year, and I think it should be passed this year.

Senator INOUYE. Thank you very much.

We are fortunate to have with us the author of S. 743 and S. 744, and I am certain the members of the committee will welcome Senator McConnell, and I have extended to him the courtesy of the committee. And if you wish to make a statement and participate in the questioning, please do so.

STATEMENT OF HON. MITCH McCONNELL, U.S. SENATOR FROM KENTUCKY

Senator McCONNELL. Thank you very much, Mr. Chairman.

To quote Yogi Berra, I feel a little bit like deja vu all over again. I introduced this identical bill last year, and you generously held a hearing in September 1988 on this same subject, and now the bill is back. A lot of bills come back in this place, but some of them, I suppose, are more worthwhile than others.

I have over the period of the last 15 or 20 years, both as a part-time professor at the college level and then as a practical politician, been a student of the field of campaign finance, and in the last couple of years taken on the dubious assignment of being the Republican point person around here and for the Bush administration on this subject.

I think Senator Danforth has put his finger right on it: of all of the various options available to us that do not tilt the playing field one way or the other—and so much of campaign finance reform does tilt the playing field one way or the other—this measure is the most meaningful and most benign. Each party would love to craft the rules in a way that makes it possible for them to win more often. And we have our notions about how the rules could be crafted to help us, and the Democrats have similar notions.

But there are a few things that do not cut against either side, that do not tilt the playing field one way or the other, as my friend Jack Danforth said. And among those things, the one that would provide the most significant relief for those running for public office is the measure before us today.

I have a statement, Mr. Chairman, which I will not read but would ask to be inserted in the record.

Senator INOUYE. It will be done, sir.

Senator MCCONNELL. I think we ought to move forward on those portions of the campaign finance reform debate that do not divide us. There are some others. We have had a number of bipartisan meetings in which we concluded that we could move ahead on disclosure of soft money, the millionaires' loophole, some possible restrictions of PAC contributions, and other things. But the one that would really save us some money and save us some time is the measure before us today.

I listened carefully as Senator Danforth asked the buyers for the litany of horror stories. With all due respect to you, Mr. Pope, they do exist, and I do not think it is an occasional thing. We need some certainty. We need a guaranteed break which is my understanding of what the 1971 law hoped to provide for candidates. And I think simply requiring that we get fixed time at preemptible time rates is something everybody can understand.

We might modify that somewhat. I understand that one of you made the point that possibly we could restrict this to Federal elections. I introduced two bills this year, one for Federal elections only and one for all elections. I think I am open to going either way, whichever one seems to have the most support.

But this is an important reform, and I do not think we ought to talk it to death. And I think Senator Danforth has really covered, and you all have responded to the areas of concern to us.

And so, Mr. Chairman, I just want to say that I hope that this bill, which I authored over a year ago, will go somewhere. And I hope it can go somewhere without becoming a magnet for a whole lot of campaign-related measures that might be offered on both sides that would bog us down in the kinds of disputes that we had last year.

Perhaps the chairman could discuss this with the leader, and maybe we could push this measure through in some kind of restricted form that did not make it draw all the undesirable things that could bog us down. But I hope we can move ahead with this bill.

And I want to thank the witnesses for coming. I think they have made the case conclusively. We hear a lot of talk around here about how much time it takes to raise money. I might say, first of all, no one makes us do that. Do not feel sorry for us. No one makes us go around and raise money. We do it because we are not all in as good a shape as Senator Inouye or Senator Proxmire, and we have to raise funds because we face real competition. And so we decide to raise money early and be prepared for the stiff competition that may be coming at us.

But do not feel sorry for us, because no one makes us do it. And all of these tearful observations around this place about how much money you have to raise every day throughout your term is absurd. No one makes us do that. Some of the most popular and effective members of this body do not do it at all. I envy them. They are in wonderful shape, and they do not have to.

But to the extent that we do have to raise money for campaigns, there is no question that in a competitive race, television and radio are the most effective way of reaching our constituents. The prices have gone up far beyond inflation, far faster than our ability to raise money.

And I think the intent of the 1971 law was to give us a break, and we are not really getting that break. And I do not think it is unfair to the broadcasters in an area that represents about three-quarters of 1 percent, three-quarters of 1 percent of their total advertising revenue, to give us the kind of break that we thought we were going to get in 1971.

So I think that pretty well states the case, and I do not think I have any questions for the witnesses. I think Senator Danforth covered it more than adequately.

And, Mr. Chairman, I want to thank you for the opportunity to participate, even though I am not a member of this committee, on this issue, and commend you for your willingness to help us move ahead on what could be, as Jack Danforth said, the single most important piece of campaign finance reform legislation we could pass that does not hurt anybody, even the broadcasters.

You cannot tell me that in an area that represents three-fourths of 1 percent of the revenue is going to have an enormous impact on broadcasters. So this is a thing that needs to be done, it is not going to have an adverse impact on anybody, and we ought to move ahead with it.

Thank you, Mr. Chairman.

[The statement follows:]

STATEMENT OF HON. MITCH McCONNELL, U.S. SENATOR FROM KENTUCKY

Good morning. I want to thank the Chairman, Senator Inouye, and my other colleagues on the Senate Communications Subcommittee for holding a hearing on legislation to strengthen the broadcast discount law.

In being here today, I feel like Yogi Berra when he said, "It's like deja vu all over again." A year ago, I introduced the "Campaign Cost Reduction Act". The Commerce Subcommittee held a hearing on my bill last September, which was very favorable. I left with the hope that we would act quickly on this important matter.

Then, with that eerie feeling of deja vu, I reintroduced the "Campaign Cost Reduction Act" this year, as two bills: S. 743, which would apply only to candidates for Federal office; and S. 744, which would apply in all races--Federal, state and local. A month later, Senators Danforth, Hollings, and Bryant, together with the Chairman of the Subcommittee, introduced my bill with some explanatory findings attached. I was pleased to join my friends as an original cosponsor of this bill.

And now, we have another hearing before the Communications Subcommittee--it is deja vu all over again; but I am happy to be addressing the broadcast discount issue, and I hope we can pass this bill, as Yogi Berra might say, "before the fat lady sings."

There has been extensive debate in the last two years about the increasing cost of campaigns. From 1978 to 1986, the total cost of House and Senate elections more than doubled, from $194 million to $450 million.

However, this fact alone does not tell us anything about the real problem or the appropriate remedy. The far more important fact we should be paying attention to is that most of the growth in campaign spending is the result of two developments: first, the candidates' increased reliance on television as a means of communicating with the public; and second--and most importantly--the skyrocketing cost of broadcast advertising.

From 1978 to 1986, when campaign spending doubled, the expense for television advertising more than tripled. From my personal experience, in any statewide race where there is real competition, the cost of TV advertising eats up at least half and as much as three-fourths of all money spent in a campaign.

High broacast advertising rates are the leading cause of high campaign spending. Even using the extremely conservative estimates supplied by the broadcast industry, the increase in spending for broadcast advertising time accounts for over 40 percent of the total increase in campaign spending from 1978 to 1986--40 percent. No other cost component of running for office has increased as much in the same time period.

Of course, the broadcast industry is a business and we should not take away its livelihood. But the revenue that broadcasters get from political ads accounts for only three-quarters of one percent of their total revenues. Broadcasters argue that they actually receive about one to four percent of their total revenues from us candidates, but in either case we are talking about small change for the broadcasters, but a huge cost item for candidates and the American public.

Further, broadcasters are different from other businesses because they extract their profits from a publicly-owned resource: the public airwaves. A license to cash in on the airwaves comes with an important string attached: an obligation to serve the public interest, even if it means giving up a few pennies of profit.

I don't think that the obligations imposed on broadcast licenses are unreasonable, and I have not heard of any shortage of people lining up for new licenses. In fact, there usually is heavy competition for licenses, because--as one broadcast trade paper puts it--broadcast licenses are "licenses to print money".

In 1971, Congress passed a broadcast discount law. Its intent, as I read the legislative history, was to ensure that candidates paid the lowest price for broadcast advertising time among all advertisers. However, because of the nature of campaigns, and an unseen loophole in the law, candidates actually end up paying more for broadcast time than any other advertiser.

Candidates, unlike most other advertisers, have to get their message out on a particular day. They have one day to make the sale; and after that, it's all over. They cannot afford to be "bumped" and run their ad on another day. For that reason, nearly all candidates buy non-preemptible time, so that they will not be bumped by a higher-paying customer.

Non-preemptible time is the most expensive time sold by broadcasters; and candidates are basically the only ones who buy it. In other words, candidates pay more--not less--than everyone else, despite the broadcast discount law we passed in 1971.

My bill, which is the exact same bill as the one introduced by my friends on the Subcommittee, would secure the original intent of the law Congress passed 18 years ago. All it does is require broadcasters--in the last 45 days before the primary and the 60 days before the general election--to sell candidates non-preemptible time at the lowest price charged for preemptible time during the same time period.

This small step in the broadcast law will be a giant leap forward in reducing overall campaign spending. Although it is difficult to estimate the exact savings, it is certain that campaign costs would be reduced substantially. Non-preemptible time is presently anwhere from twice as expensive as preemptible time to eight times as expensive. This is a huge gap in cost.

As I said earlier, there is a lot of concern about the high cost of political campaigns. However, we are not going to reduce overall campaign spending by erecting an arbitrary limit. We tried that in the presidential system, and it has been about as successful as Prohibition.

Instead, we should lower the cost of campaigns as a means of reducing campaign spending and the burden of fundraising. The simplest and most effective way of doing that is to provide a reasonable discount on the main cost component of most campaigns: broadcast advertising time.

Once again, I would like to thank the Chairman and the other members of the Subcommittee for moving ahead on my bill and their bill. I hope we can get this measure to the floor soon and get it written into law. It will make a major difference.

Senator INOUYE. I would like to assure my colleague that those who know me would realize that I do not, as a general rule, conduct hearings on measures that have no chance of passage. And I think that if you look at the portfolio of the subcommittee, you will notice that all those matters that we have heard have progressed and usually to the floor for passage.

I assure you that we take this very seriously, and I will most certainly discuss this matter with the Chairman of the full Committee and see what we can do. Obviously, there is not much we can do before the recess, but sometime in September or October I intend to have this matter brought up.

Senator MCCONNELL. Thank you.

Senator INOUYE. I have just a few questions. We have used the word "lowest unit cost." What is your definition? How would you define "lowest unit cost"?

Mr. **Pope**. Senator, we refer to it as the lowest unit rate.

Senator **Inouye**. Lowest unit rate.

Mr. **Pope**. Basically, what it means is our computer, when it puts in the orders for all the spots that are running in a show, usually has a price tag on each unit showing what it was sold for; and the lowest unit rate would be the lowest price that was paid in a certain class of time for participation in a program.

Senator **Inouye**. So, in other words, if I happened to be just a neophyte in this business and I did not know what this was all about, I would have no idea what the lowest unit rate would be. In fact, you mentioned some of the smart operators. If I were not a smart operator, I would be in your clutches? This is an auction, is it not?

Mr. **Pope**. Yes, sir, it is. But I do not think anyone should ever assume that a prospective advertiser is in the clutches of our station. Stations are in the business of trying to solicit advertising, and we want every possible sponsor or advertiser, and we do everything we can to make it possible for them to buy on our station.

Senator **Inouye**. Ms. Farrell.

Ms. **Farrell**. The lowest unit charge, when it was originally set up, was supposed to mean the lowest cost that a spot was booked at in the 45 days of the 60 days, and by any commercial advertiser, the lowest cost that the station had booked that spot to any advertiser. They were then to come to any political advertiser who wanted to go on the air and say here are our lowest unit costs for each spot.

Now, it is all gone. I mean, it does not exist any more, because no one pays attention to the 45 days. I mean, most stations change their rate cards every week; I mean bigger stations in the bigger groups, every week they have new rates.

Now, how can you have new rates every week if it is supposed to be the lowest unit rate for 45 or 60 days? So I mean that is what it meant originally. It does not exist any more.

Ms. **Crawford**. I might add, Mr. Chairman, that I think the way some stations started to get around it was that the lowest unit rate to them meant preemptible, and then there would be, if they still had the 2-week preemptible, the lowest unit week——

Senator **McConnell**. Is that not true of most stations, that the attitude at most stations is that the lowest unit rate is the preemptible rate?

Ms. **Crawford**. The immediately preemptible with no notice.

Senator **McConnell**. Which we buy at enormous risk.

Ms. **Crawford**. That is right. You would not run, for the most part.

I have even come to the conclusion where I have many times asked for the lowest unit fixed rate, because I know very well again when you go to the big advertisers that they have negotiated costs with the station where their spots will run; they will not be preempted. Yet they are lower than the fixed rates.

I would also say in addition to that——

Senator **McConnell**. So we are probably paying the highest unit rate most all the time, right?

Ms. **Crawford**. Absolutely, absolutely.

Senator **McConnell**. Exactly the opposite of what the 1971 law was supposed to be.

Ms. **Crawford**. Yes. And from the way that—after the law first took effect, the way stations treated it. You would get a rate card, and the lowest rate on that rate card, that was in effect for 45 or 60 days, depending upon the election. Then it started to change.

I think what has happened now is there are so many different interpretations that if you had a room full of communications attorneys here, you would get a different interpretation from every one. That is a good part of the problem.

It's not that many broadcasters do not try to fulfill the law. But it is just that there are so many different interpretations among attorneys that it has led to the mess that we have today.

Senator **Inouye**. I am certain that the horror stories that you related to us do exist. I have no ideas in what frequency.

You cited a few examples where reimbursements were made. Would these broadcasters have made the reimbursement if you had not pointed out the possible violations?

Ms. **Farrell**. In that case, where I found stations that were giving my opposition lower rates, no they would not have. They were shocked that I had copies of the opposition's orders. It was a lot of money. It was not a little amount of money.

Senator **Inouye**. What excuse did they give you?

Ms. **Farrell**. There was no excuse.

What happened was the buyer who was buying the other candidate was in that market. She was a local buyer and she knew the lowest unit rates in the market. So, they could not get away with doing to her what they were doing to the buyer who was buying for me.

What we had to do in that case was check all the stations.

Senator **Inouye**. In other words, if you had a neophyte in the business who did not know the ins and outs——

Ms. **Farrell**. If you have someone in the market who has a lot of business in the market, you will know what the lowest unit rate is.

There is not a buying service or an agency in the world that has someone in every market with the best rates. There are some agencies and some buying services that have the lowest rates in a market because they have the largest volume of business.

That was the situation in this case.

Senator **Inouye**. That is a serious charge.

Mr. Pope, is that quite frequent in your business?

Mr. **Pope**. No, sir. That is very unfamiliar to me. I cannot obviously say that it never happened. But I can tell you that in my experience it has not happened. I think that is an unusual event among the larger market, the bigger stations.

We have a campaign going on in New York City for mayor right now, that you probably know about, in which there are at least four Democratic candidates running for the Democratic nomination and at least two Republicans. So there are six people actively campaigning every day for a primary that I believe is on September 9.

Believe me, they are working with our people every single day. They are in looking at our public files. They see our political orders every day.

We are making adjustments almost every day because we don't know from day to day what the lowest unit rate is going to be.

I must say that I sign four or five cash refund checks every week in connection with campaigns like that.

We know that it is important to get them back the money, so that they can turn around and spend it with us again. So we are not anxious to hold up any money.

Senator **Inouye**. Are these cash refunds made voluntarily?

Mr. **Pope**. Oh, absolutely.

Senator **Inouye**. Or are they pointed out, that you have made an error?

Mr. **Pope**. No.

We have a person in our sales department whose almost full-time job in busy campaigns is to make sure that we abide by these rules. They are very complicated and they change every day, and the rates change every day. So it is not something that you let go.

Ms. **Farrell**. May I say something here?

Senator **Inouye**. Yes.

Ms. **Farrell**. Mr. Pope works for a station that is connected with a very, very good group, as far as political rates are concerned, and their treatment of political candidates. So I do not think he is aware of some of the things we are talking about because his group does not operate the way we are discussing, you know, the things that Jan and I are discussing. His group operates on a very high level.

Mr. **Pope**. Thank you very much

Senator **McConnell**. Let me interject something. Maybe this point was made earlier.

The examples you all are talking about are not all that unusual, are they?

Ms. **Farrell**. No, they are not.

Senator **McConnell**. We are not talking just about occasional things. We are talking about things that happen all the time, frequently.

Is that correct?

Ms. **Farrell**. Yes, except that his group would never do that.

Ms. **Crawford**. I would also agree with Cathy There are certain groups that are wonderful to work with. They know the law and they teach their station people, because many times it is the representatives who are asked about the law. They are very, very good to work with.

But those groups do not own most of the stations in this country.

Ms. **Farrell**. Right.

Ms. **Crawford**. We are trying to make it so that it is possible for people to run for office and get their message out, and do it easily and clearly.

I think both of us have friends who are broadcasters, and we try to work with them. They understand what we are doing when we are on a campaign, and we certainly understand their position.

I worked at WMAQ in Chicago in 1967 and 1968, so I have seen it from both sides.

I will tell you that, particularly last year, we are still waiting for checks from stations, and we had to point out many of the refunds, that spots did not run. In fact, we are still waiting for some affidavits to be sent to us.

Senator **McConnell**. How common is that, that the refund does not even come before the election so that the candidate has a chance to spend the money?

Ms. **Crawford**. It usually comes afterwards. But it is becoming more and more the case that there is money being refunded.

Senator **McConnell**. After the election.

Ms. **Crawford**. After the election.

Senator **McConnell**. It does not do you much good then.

Ms. **Crawford**. No, it doesn't. It takes forever to get the affidavits to verify, to do your reconciliations.

On another point, I would like to see the lowest unit rates, prior to either the 45 or 60 days, available a month before that period begins, because sometimes you make calls to stations 2 weeks before and, because no one has asked about the political rate, they have not even gone in and looked for it.

That is very difficult when you are working on the type of timeframe that Cathy and I many times work on.

Senator **Inouye**. Senator Pressler.

Senator **Pressler**. I think perhaps some of my questions have been covered. So I will read the record.

But many campaigns, such as mine, are not very sophisticated in buying TV time. We do not have a big media firm. We just go out and probably have one of my campaign secretaries go down to buy the time. We don't have one of these big, expensive campaigns, as they do in other States, big States.

I am not suggesting that anybody has ever been dishonest with us. But we do not have people who go to the station every day who really know about all of this.

But let's say that the candidates begin their media buys, and then the campaign heats up and the station raises its rates. Maybe this has been asked before.

On the face of it, we assume that it also would be raising its rates to commercial advertisers. But, in fact, it makes that up to most favored advertisers at other times during the year.

How does a candidate or the FCC detect that situation?

Ms. **Crawford**. It is very difficult.

I think the FCC's attitude is that every quarter the rates can change. So, generally, in the fourth quarter, when the general election is, and it is the most costly in a campaign, you can have two rates. You have the summer, the third quarter rate, and you have the fall quarter.

But other than that, it is pretty well set as to what the 45 days or the 60 days is, depending on when your primary is, particularly the 45, with the primary, or your caucuses. That is one of the things that has also happened in the last several years.

Because of the open caucus system, candidates can buy time at the lowest unit rate 45 days prior to a caucus, or a convention, if it is an open convention.

Senator **Pressler**. So, in other words, stations could juggle things around——

Ms. **Crawford**. Absolutely.

Senator **Pressler** [continuing]. And really charge a much higher rate to candidates.

How can we prevent that?

What do we need to do about that?

Ms. **Farrell**. The only way a law or a bill like this will work is if the FCC or whoever is regulating it is allowed to look at the stations' rates. I don't mean just political rates. Anyone can look at the political rates. They must be able to go in and see what the lowest advertiser is paying during the political period. If that does not happen, we will have a little better control than we currently have. But still, there is no way to know that a station is giving you the lowest unit rate without looking at the records.

Ms. **Crawford**. May I add to what Cathy said?

Senator **Pressler**. But you would also have to do some analysis, wouldn't you?

You would have to look at the records and do some yearly analysis?

Ms. **Farrell**. You would just have to punch up the computer to look at it. Most stations are computerized. They can see what the rates are in a minute. It would not be a problem.

Senator **Pressler**. They will provide that computer printout?

Ms. **Farrell**. Pardon me?

Senator **Pressler**. They will provide that computer printout to you?

Ms. **Farrell**. Oh, no, no. They do not provide any records on anything but political advertisers.

So, if you don't have the records of nonpolitical advertisers, you will never know what the lowest unit rate is.

Senator **Pressler**. With what computers can do, as you said, they probably have all this on computer. They probably even have a chart or a graph. They even have your golf score handicaps now at country clubs, and you can see a line for how it is going. It is pretty simple.

Maybe we should require that that be displayed.

Would that be something the industry might do voluntarily?

Ms. **Farrell**. Well, if we were allowed to go into the station and look at their records and see what the lowest rate in the market was, then we would have no problem. I mean, we would not even have to go in because then the stations would submit the lowest unit rate, because they would never know when either the FCC or a buying service was going to randomly send someone in to look at their rates.

But we cannot do that. That is not allowed.

Ms. **Crawford**. We just have to take their word for it. The only way you really do become aware of the lowest unit rate is as Cathy said. I have been in the situation where I have been doing a political campaign and been doing some free lance buying for J. Walter Thompson or Needham, negotiating what those best rates are in the very same markets.

That is really the only way we know what those lowest unit rates are, because the FCC has no authority to go in.

Senator **Pressler**. Mr. Pope, do you have any reaction to that?

Mr. **Pope**. Yes, sir, I do.

First of all, I don't believe there is any broadcaster who would refuse to state that whatever rates are given the candidates are the lowest unit rate—under affidavit or any other form that is requested—because that is what we do.

The problem with making our rates available to anyone to see, other than political rates, is we are in a highly competitive business. Our market is such that our television station has five major competitors and our radio station has probably 40 or 50. Also, the people that buy for political candidates are also, as was just stated, buying for a lot of other commercial accounts.

It really is not acceptable to us to have the details of our commercial dealings with all advertisers available to all of our competitors, which would quickly happen under that process.

Ms. **Farrell**. Excuse me. Just make them available to the FCC. The, if we question something, we can call the FCC and say is this the lowest unit rate on this station in that market. They don't have to make them available to us to jeopardize the commercial advertisers' position.

Mr. **Pope**. I think the FCC has that ability, if they wish to use it, right now.

Ms. **Farrell**. I don't think so. I have talked to Milt Gross, and he has told me that he can't do anything other than with political rates.

Now, I may be wrong, but that is the impression that I have had for years from him.

Mr. **Pope**. But, Ms. Farrell, I believe if the FCC asked us is that the lowest unit rate and we said yes, that could be done.

Senator **Pressler**. But that is really not the question. It is the comparison with some of the changes in commercial rates.

My original question was about this: during the period of time when the race heats up, if, in fact, a station raises the rates to commercial advertisers at the same time, but then it, in fact, makes it up to the most favored advertisers at other times during the year. You would need kind of a year's information, or along those lines, and I do not think that is available to the FCC.

Mr. **Pope**. Well, in the real world, sir, I agree with you. I do not believe it is, at present.

But in the real world we do not really play that kind of game. We have too much to do to play games like that.

Senator **Pressler**. I hope not, although there are indications that rates do go up during the fourth quarter.

Now, the real question here has probbly been asked already, and if it has been, I'm sorry. But what we are really talking about is the situation where a station sells time to two opposing candidates, and one candidate is urged to buy fixed time, to be sure that ~~he has~~ his time locked in, and the other candidate is told don't worry, you will get cheaper, preemptible time, and he is sort of told by body language that he is going to get prime time or whatever it is, anyway.

Indeed, there have been cases, I guess in Missouri and elsewhere, where this is thought to have happened.

How can we detect this? Does it happen very often?

Ms. **Farrell**. The only way we can detect it is going back again. If a buyer suspects a station of unfair play, or whatever, or suspects them of anything, he should be able to call the FCC and say would you check, ask the station to supply you with this week's rates or the last 45 days—anything you want.

Senator **Pressler**. A candidate can actually do that? You can actually call and get a response from the FCC on this?

Ms. **Farrell**. Well, yes. I work with the FCC every day that I am doing a campaign, a Federal campaign. If he can get the rates, and he has them in front of him, he gets them faxed to him, and I call up and say that I am paying $100 in this area, is anybody else paying lower, or is that the lowest unit rate that the station sent you, he then can say yes or no.

Then he can go after them.

I am not interested in going after the station. I am interested in getting the rate that I should get for my client.

Senator **Pressler**. Thank you.

Senator **Inouye**. When Members of the Senate were made aware that this subcommittee was holding hearings, I received several letters from my colleagues, both Democrats and Republicans.

They cited in their letters some of their problems. I would just like to share them with the subcommitte, without naming the Senator or the call letters of the stations.

They have one thing in common. All the stations mentioned here are network stations. So they are not small, neighborhood stations. We are talking about the "biggies:" ABC, NBC, and CBS.

This is from a Republican Senator. The Bush-Quayle campaign paid for adds in the same class and in the same show. The Bush campaign was charged $100 for a 30 second spot, and in the same program, the same show, this candidate was charged $200.

Then another station charged the candidate $1,300 for a spot in the late news, and in the same program, the Bush campaign paid $550.

This is from another Senator: the station's rate for Sunday morning--this is a popular program—went from $75 for 30 seconds on September 25 to $350 on October 9.

On the Sixty Minutes program, for the week of September 19, $2,100 jumped to $3,000 7 days later.

One of my colleagues got reimbursed $18,655. This was for overcharging more than the lowest unit rate on 162 occasions. That is a lot of occasions.

Commercial advertisers for another candidate were offered spots on the late news for $250. My colleague was told that his rate on the late news, the same program, would be $800.

One week before the election, this major network station advised my colleague that a 30 second spot on the 10 p.m. local news would cost $9,000. The rate a week before was $1,900.

Senator **Danforth**. Mr. Chairman, could I ask just one more question?

Senator **Inouye**. Yes, please do.

Senator **Danforth**. One of the issues is whether any legislation should only cover Federal campaigns or should cover all campaigns.

I know Mr. Pope has stated his position. It would seem to me that if they only covered Federal campaigns, then the local and State candidates would really be put into a squeeze and would be at a terrible disadvantage.

Ms. **Crawford**. Absolutely. I think it should cover all candidates. The other problem is that the non-Federal candidates, the stations only have to, each election cycle, pick one race that they will sell time to on the non-Federal level.

So, unlike Federal candidates who have access to the airwaves, all stations must sell time to Federal candidates. That is not the case at the non-Federal level.

I have been told as recently as just a few weeks ago that one station won't sell time to any political candidates.

Ms. **Farrell**. They can't do that.

Ms. **Crawford**. I know. But no one has challenged them. That is part of the other problem. This is all interconnected.

Senator **Danforth**. But this would really discriminate against the local people.

Ms. **Crawford**. Absolutely.

Senator **Danforth**. We are not experts in this, but would you tell us how this would work against the local and State candidates if they were not covered by the legislation. What would be the practical effect on them of passing the legislation if they were not covered by the legislation?

Ms. **Crawford**. I think they would be treated as issues are. They would have to pay the top rate to get on the station. Otherwise, the stations would probably say we don't want to take it.

Ms. **Farrell**. Stations have the right, in smaller campaigns, in non-Federal campaigns, to say I'm going to—well, say there are five different campaigns going on, such as county executive, county treasurer, and things like that. A station has the right to say I'm only going to take advertising for this race. They must take advertising for some political race. But if they want, they can only pick one.

Now, actually, if you are not going to regulate for the State people and the local people, then they have to go in and pay higher rates. But the stations might, in that case, take more than they usually do.

A lot of stations are very good and will take all the major races. But not all.

Senator **Danforth**. If we excluded them, then they would be charged much more?

Ms. **Farrell**. Oh, we should not exclude them.

Senator **Danforth**. But if we kept them in, then would the stations say well, then, we are just not going to run local races?

Ms. **Farrell**. They have to take, say, a gubernatorial race.

Senator **Danforth**. Well, let's suppose there is a Governor's race, but also a race, say, for State attorney general. Could they just say well, look, Congress has passed this law and we cannot charge you an arm and a leg anymore and, therefore, our policy is that we will take the Governor's race, but if you are running for attorney general or lieutenant governor, or something else, forget about it.

Could they do that?

Ms. **Farrell**. Yes, they could do that.

What they do is they say we'll sell one spot for a week to you, you know, on the major radio stations.

Senator **Danforth**. Well, is that a good thing for us to do?

My initial reaction is they have to be brought in because if they are not brought in, Federal candidates are charged a much lower rate than State and local candidates.

On the other hand, if the stations have the ability to keep them off altogether and they are disgruntled about political campaigns because they can no longer charge high rates to political candidates, they might say all right, we are being swamped by the Federal candidates, and we just cannot do this anymore, and, therefore, I'm sorry, but if you are running for secretary of state or State treasurer or whatever, we just can't run any commercials in tha race.

Ms. **Farrell.** Yes, I know. That is a problem that has to be handled. I don't know how you would handle it.

Ms. **Crawford.** I think what the stations already do on the non-Federal level, even sometimes at the gubernatorial level, is they limit the amount of access candidates can have.

They will sell three spots a week sometimes. At that point, I won't even buy the station because it is money ill spent.

Senator **Danforth.** Wouldn't that problem be exacerbated, though, if the State and locals were covered by this?

Ms. **Crawford.** It probably would be. But I still believe you have to bring them in. It has to be worked out somehow.

Senator **Danforth.** I think so, too. This is a question that we should think about.

Ms. **Crawford.** It is a very real possibility.

Senator **McConnell.** Let me just interject here at this point, even though I introduced the bill both ways and even though Senator Danforth points out a potential shortcoming of including everyone.

I think you all are correct. I think it is better to include everybody. Then, if this becomes an enormous problem with people being frozen out of the airwaves altogether in a variety of different local races, then we will have to try to get at that problem.

In my State, we have run, in a number of instances, into stations that severely limit political advertising, to the point where not only can you not do any good on that station but nobody else can.

It tends to be the stations, of course, that are doing well and that have a lot of rate commercial advertisers anyway and don't need us. It is the stations with the small audiences that tend to need us most.

Ms. **Farrell.** And if you are successful in putting in a bill that does reinstate the lowest unit charge, you are going to run into more of that. So the bill has to include something to the effect that stations cannot unfairly restrict access.

I mean, even in a presidential campaign, a large network station in a large city will say you can only buy three prime time spots a week. So they do restrict.

The restrictions are going to get worse, unless it is covered in the bill.

Senator **McConnell.** So you would add something to this bill to deal with this problem?

Ms. **Farrell.** I would definitely add something to the bill.

Senator **McConnell.** You would not just wait to see how extensively the problem develops after passage of the bill?

Ms. **Farrell.** Oh, no, let's not wait. We have to buy a lot of Federal campaigns in 1990, and it would be nice if we had the bill in then and we knew what we would be able to buy. You know, we don't want to get hit with a surprise where the station says oh, I'm only going to sell the Senator a total of five spots a week.

Radio stations do that now, the larger radio stations.

Senator McConnell. If we put in something like "reasonable access" how would we define that? How would we know what that is?

Ms. Farrell. Well, how the FCC, how Milt Gross defines "reasonable access," is if you say to a station I want to buy prime time and the station says you can only have one a week, then you call him and he will say no, you have to sell them more than that, that is not reasonable access.

But it goes down to three, now. I mean, a station can say you can only have three prime time spots.

I do not think that is reasonable access, if I am buying a 700, 800, or 900 point schedule.

Senator McConnell. But if we put that in the bill, then the FCC would determine what is reasonable?

How would we determine what is reasonable access?

Ms. Farrell. That is a problem that we would have to talk about. We'd have to figure it out.

Ms. Crawford. The way I deal with stations that try to restrict Federal campaign——

Senator McConnell. Let me just interject that we are making a record here. So how would you define "reasonable access?"

Ms. Crawford. I think most of your commercial agencies want to have a certain number of spots run each week, a minimum of 12, if not sometimes 24. I think that the political, that we perhaps might look at that frequency to at least get a bottom line as to what is reasonable.

Senator McConnell. Say that again, please. I'm sorry.

Ms. Crawford. Frequency by day-part, that is. We could devise a system as to where it is so many spots per day-part.

Many radio stations—and the FCC has agreed to this sometimes—say that 12 spots a week on radio is reasonable access. Generally, the way that is divided up is four spots in morning drive, four spots in mid-day, and four spots in p.m. drive.

Then you can get a message across.

But if you are limited to three spots a week, which many of the stations, particularly on the local level, will do, it is not worth buying.

Commercial agencies generally will buy a minimum of 12 spots a week.

On the television side, it could be even more.

Senator McConnell. Would you ~~give me a~~ range on the television side? If we had this bill out on the floor and we were trying to make some legislative history about what we were talking about here about reasonable access, you have given us a guideline as to what you would be talking about in terms of radio.

Ms. Farrell. The larger network stations in the market markets limit you—and I am just doing this from memory, so I may be wrong—to, say, two early/early morning a week, two early morning a week; then they will give you as many daytime as you want a week. That can go up to 10 or 20, because they have a lot of inventory there. For early news, they will give you——

Senator McCONNELL. Only two spots in the morning for a whole week on a station?

Ms. FARRELL. On the larger network stations in the larger markets, yes. It is a problem.

Then, when you get to early news, some of them go as low as two spots a week. Then access is maybe two or three; prime is like three; late news will be two.

So the limits are really very difficult to work with if you are trying to get a big schedule together.

I think that that is an area that has to be really looked at and defined. I think the larger network stations in the larger cities have limits that are too small.

Now, what happens is this. If they have a particularly slow season, like, believe it or not, the last fourth quarter, with the presidential and with the Olympics and with everything—it was a very slow season for them—they will come and offer you more time.

Mr. POPE. Could I interject here, too, Senator?

The problem from the station's point of view is that when we are talking about limiting the number of spots available, we are talking about to one candidate, and most of us are dealing with perhaps dozens of candidates for dozens of offices at the same time, both Federal, local, State-wise, and so on.

So, if we are talking about extending this lowest unit rate and we are talking about reducing or enlarging the limits on the number of spots we are required to take, we get into a place or we could be faced with a place where we would have nowhere to run our normal commercial business at all in certain very desired shows. This is important.

Senator McCONNELL. Yes. But it is important to remember, though, that in most States—not all States—you have off-year elections. One of them is going on this year. We have off-year elections in my State.

But in most States, we are talking about a 60-day period and a 45-day period every two years. That is all we are talking about.

It is going to be a problem only during that period.

Also, I would remind you that the representative from the NAB testified at this hearing last September that the total advertising revenue from political candidates is only 0.75 percent.

Mr. POPE. Well, some of us are situated in places where we serve more than one State. We serve certainly multiple congressional districts, Senate districts, multiple governors.

In a simple situation where there is one station in a fairly small area and one State, there is one set of rules that might very easily work. But when you get into the big metropolitan areas, particularly in the crowded Northeast, where our signals go across all kinds of State and other boundaries, certainly across congressional districts—I believe we serve 55 congressional districts, for example.

Senator McCONNELL. Yes. But isn't it also true that in a market like yours, the typical candidate for city council or the State legislature does not buy television time. Does he?

Mr. POPE. There is less use in the smaller elections, the smaller offices, like in some of the smaller cities around New York, for example, than there would be in some other areas. But we are certainly very pressed with multiple races, frequently, and a lot of candidates in a lot of the races.

Senator McConnell. Yes. But the little races cannot afford to be on your station, anyway.

Mr. Pope. Well, you would be surprised. A fellow who is running as a Republican for mayor of New York, which is almost unthinkable, is supposed to have spent $10 million already.

Senator McConnell. Well, I am familiar with him, and I would not call him a "little guy."

You all are making a lot of money off him, too.

Ms. Crawford. There are certain stations that are in the situation that WPIX is in, but, again, they are not the majority.

Frankly, for Federal candidates, when I am given limits up-front, the FCC law flatly states that Federal candidates cannot be limited up-front. It has to come down to a discussion on what is reasonable access.

It is at the non-Federal level where the candidates become very limited.

This interpretation has come over the years from the Carter ruling—the 1980 Carter ruling.

Senator McConnell. Let me ask you this.

Are the two of you buyers of time disagreeing on the question?

Ms. Farrell. No.

Actually, what Jan is saying is right, but they limit us anyhow.

Ms. Crawford. You have to fight.

Ms. Farrell. Then you call the FCC and say this is the card that I got from a big station, a big market, and the FCC will say yes, that has been approved. I mean, they have cleared it. Their lawyers have cleared it with the FCC lawyers, and that is the card you get and that is what you work with.

I mean, we listen to back and forth signals all the time from the FCC. They say this is the way it should be; you should be treated as a most favored advertiser; you should be treated this way and this way and this way. Then you get treated that way, and you call them up and tell them and they say well, there is nothing we can do about that, their lawyers did get that approved, or changed, or whatever.

Senator McConnell. That is a regulation, is it, that relates to Federal races only at the moment?

Ms. Crawford. That's right.

Senator McConnell. What does it say?

Ms. Crawford. It basically states that stations cannot up-front limit the amount of time made available to Federal candidates. It has to come down to the equal time requirement or reasonable access.

It is a discussion between me and the station on behalf of my candidate, and if I disagree with it, then I call Milt Gross or Bobby Baker and we work it out.

In many cases, they will call the station and say you make this time available; or, as Cathy has said, in some circumstances they have said we do consider that reasonable access.

Senator McConnell. Would it be a good idea, then, for this committee to include that kind of languge in this legislation and apply it to all races?

Ms. CRAWFORD. I think so.

This issue is much more complicated than just the lowest rate. There are a number of factors that have to be included to make it a totally workable, succinct, clear law where everyone knows what we are paying for political time.

Senator McCONNELL. What are the other factors, other than the acces question?

Ms. CRAWFORD. I think it is about any make goods, if we continue to have some kind of preemptible rate.

I think the affidavit should be received by the agency in December, following the November elections, and you have an accounting—you know, that you don't have to go in several months later, when you have finally gotten all the affidavits and gone through the reconciliation, and find that you have $4,000 or $5,000, or maybe only a few hundred dollars for one of your candidates. But all of that money affects his or her being able to pay off their bill. It is still, as I said earlier, where we still have money that is outstanding, and we would not have it coming to us unless we had told the station that it was there.

Some have actually acknowledged that they have known it is there but they just have not sent the check.

It is a very complicated problem.

Senator INOUYE. I hope that we have a "Super Solomon" on our committee or on our staff, because if we were called upon to legislatively define "reasonable access," I would not know where to begin because they are all different.

In New York, you have a station that would cover six or seven States, and you may have 6, even 12, senatorial candidates to cope with. In some other jurisdiction, the coverage would be less. The population, the demographics, would differ.

I don't know how to come up with a definition.

Ms. FARRELL. Well, "reasonable access" does not have anything to do with WPIX going into all the States that it does. They have to handle races for New Jersey, New York, and Connecticut. That is all.

I do not think it happens that New Jersey's Governor and New York's Governor are elected in the same year. I mean, it could happen. I think, as a matter of fact, you have three different Governors, so you might be going along with a lot of different rates.

But there is no station that has to handle the elections of six States in this whole country.

So I think the reasonable access part of it really has to do with——

Senator INOUYE. Oh, I meant six senatorial candidates.

Ms. FARRELL. Oh, six senatorial candidates. Yes, that could happen. I doubt if it would happen in the same year, but I guess it could.

Senator INOUYE. Well, we will try our best.

Senator DANFORTH. Mr. Chairman, you have been so generous with your time and I am reluctant to keep this alive at all at this time.

Mr. Pope, you have been very good and I understand your position and appreciate it.

What I am concerned about is this. I do think we have a problem with how to deal with the State and local candidates, and whether to apply the lowest unit rate to them. My concern is that if we expand the reasonable access provision suddenly we will have transformed your effective, but limited, opposition to nuclear warfare against the bill.

I mean, does it get progressively more terrible as far as you are concerned?

Can you think of some way to deal with the local people that will not hurt them?

Mr. POPE. I appreciate the spirit of that question, Senator.

Our job as broadcasters is to be as far as we can, to help make the democratic process work. We have to rely in part on the goodwill of all the parties involved in it.

I think the single problem that I see of trying to enarge it beyond Federal candidates is that it could just complicate the problem a great deal more than it already is. Rather than simplify it, I think it will make it worse.

The question, then, as to whether it will save anybody any money is going to be even greater, because with more people looking for our time, it tends to drive the rates up.

So, certainly there is going to be no "nuclear warfare" on this issue. We have all learned to live with it. We feel that is part of our job as broadcasters, to find a way to accommodate this process and make it work.

We deal with our political elected officials all the time and hear their views on this rule all the time. If we are going to be responsible broadcasters, we have to find solutions.

So, obviously we are not enthralled by this bill, and we have suggested some ways that, if it is effected, we could find a way to live with it. We hope you pay attention to those because that, I think, would minimize some of the things we have heard about today that I don't like to hear about any more than you do.

Senator INOUYE. As Ted Koppel would say, you have just had the last word.

We just got the notice that a vote is on.

Mr. Pope, Ms. Crawford, and Ms. Farrell, I thank all of you in behalf of the committee.

It has been not only interesting, but enlightening, for me. I can assure you that this subcommittee will do something about this.

The hearing is adjourned.

[Whereupon, at 10:37 a.m., the subcommittee adjourned, to reconvene upon the call of the Chair.]

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

Non-Voter Study '88 - '89

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JOHN WHITE

TESTIMONY

OF

CURTIS B. GANS

VICE-PRESIDENT AND DIRECTOR

COMMITTEE FOR THE STUDY OF THE AMERICAN ELECTORATE

BEFORE THE

SUBCOMMITTEE ON COMMUNICATIONS

COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION

U.S. SENATE

JULY 19, 1989

Mr. Chairman: My name is Curtis Gans. I am vice-president and director of the Committee for the Study of the American Electorate, a non-partisan, non-profit, tax-exempt research and public policy development organization, which has, for the past 14 years, been attempting to study and address the problems of low and declining political participation in America.

I want, at the outset, to thank the chairman and ranking minority member of the Committee and the chairman of the sub-committee for inviting me to testify on this important issue and the staff, both majority and minority, for their courtesy and help in the compressed time-frame necessitated by the deadline for this hearing and the press of other business.

In a larger sense the whole nation owes the chairman of this commitee, the chairman of this sub-committeee and the ranking minority member of this committeee a debt of thanks for raising, pressing and placing on the public agenda the issue of televised political advertising and its disastrous effects on the American political process.

Committee for the Study of the American Electorate
421 New Jersey Ave., S.E., Washington, D.C. 20
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Mr. Chairman: Last year. we held a Presidential election and nearly half the eligible electorate stayed home. The United States had the lowest turnout since 1924 and, outside of the states of the old Confederacy we had the lowest turnout since 1824. Turnout declined among every age, income, racial, ethnic, level of educational attainment and occupational group with the exception of those aged 65-70.

Since the 1960's. turnout in both Presidential and mid-term elections has declined by more than 20 percent nationally and by more than 30 percent outside of the South. More than 20 million Americans who were formerly voters, no longer bother to cast their ballots. Young citizens, aged 18-24, voted at a 29 percent rate in 1988, at a 16.6 percent rate in 1986.

The United States. if one counts both its Presidential elections and its mid-term elections, now has the lowest rate of voter participation of any democracy in the world.

Since 1974. campaign spending for the U.S. House of Representatives has jumped from $53.5 million to $256.5 million. Spending in races for the U.S. Senate has increased from $34.7 million in 1974 to $201.2 million in 1988. These figures represent a nearly 600 percent increase in campaign costs in a decade and a half or, in constant dollars, more than a 300 percent increase.

Both of these phenomena -- spiralling campaign costs and declining voter turnout -- have occurred precisely during the time that television has become a central factor in American lives and in the conduct of the nation's politics. It is my considered judgment, based on 14 years of study in this field, that this juxtaposition -- the rise of television, the increase in campaign costs and the decline in citizen civic involvement -- is not coincidental.

The United States is also the only democracy in the world which does not. either by time or format, regulate its televised political advertising. The United States also has substantially lower turnout than any other democracy. And it is my considered judgment that the juxtaposition of these factors -- the lack of regulation of television advertising in the United States and its substantially lower turnout -- is not coincidental.

Reasonable people may disagree as to which form of constructive regulation of political advertising on television will be most effective, offers the best chance of enactment and can pass Constitutional muster. The chairman and ranking minority member of this Committee know that I believe legislation which has at times, been introduced by the chairman of this sub-committee and Sen. Warren Rudman and which has been co-sponsored by Sen. Wendell Ford, the chairman of the Committee on Rules and Administration, is more likely to survive these various tests than the legislation around which these hearings have been organized.

But the critical question now is not the form of such legislative regulation but whether there will be such regulation at all. For until and unless there is such legislation and regulation, it is likely that the conduct of politics in what prides itself as the best and greatest democracy in the world will continue to set an example, except in time of war, recession or in the presence of an overwhelmingly charismatic candidate, for the greatest percentage of voters driven from the polls and for a government of, for and by the intensely interested few.

It is within this framework that one may view examples of the current state of American politics:

(VIEWING OF ADS)

With regard to these ads there are five things to be noted:

--Negative, trivial and scurrilous ads are not a new phenomenon nor are present versions necessarily more outrageous than those from other elections. What is different is not the type but the volume. Where such ads were once limited to the occasional campaign and accompanied by howls of outrage or put on largely by independent expenditure groups, they are now the staple of all campaigns for which television can be used as a primary medium of communications.

--Each of these ads and the thousands of their brethren that disgrace the air-waves each election are at best over-simplified and misleading, at worst and often, distorted and downright dishonest. Because of this they present a necessarily false picture of the issues, the character of the candidate and, to a captive public -- since these ads are designed to be shown in the midst of programming the public is interested -- a negative image of the political enterprise as a whole.

--They have become the staple of campaigns because the independent, non-responsible and increasingly irresponsible political consultants who today run American campaigns say they work to win elections. But if truth be told, they work for only 50 percent of the consultants and candidates who win while 100 percent of the electorate which has to view these ads becomes the loser.

--These ads emerge from the same technological development, the tracking poll. When the consultant for candidate A finds through the tracking poll that the candidate for whom he or she works is substantially behind candidate B, he orders up a set of demagogic attack ads to cast doubts about the opponent, loosen candidate B's hold on the electorate and reduce the impulse to vote for B. What happens, as a consequence, is that the consultant for candidate B notes through his tracking polls that the gap between the two candidates is closing, has closed or that A has overtaken B. And in order to restore B's primacy, he orders up a dose of the same medicine.

--He does so because the nature of the ads used against B are virtually unanswerable, appealing, as they are intended to do to the emotions rather than reason. The only recourse is to respond in kind. The result is an escalating arms race of attack ads that becomes the equivalent of airwave pollution. And the impression that the electorate gets is that all politicians and the political process as a whole are not worthy of their respect and trust.

--These ads, in turn determine the nature of the entire campaign. for they establish the themes around which the campaign is conducted. If we have campaigns that are increasingly 30 and 60-second spot advertising, seven second sound-bites and candidates who seem unable to say an unprogrammed word, it stems from a single source -- campaigns that are run almost exclusively on television by irresponsible political consultants who, in the pursuit of winning, know of no tactic too low or trivial to besmirch their opposition and drive down the opponent's turnout. Does anyone seriously believe that the 1988 Presidential election was or should have been about Pledges of Allegiance, "good jobs for good wages," prison furlough programs, or competence?" Or that the campaigns depicted in these hearings were or should have been about whales and homes as in Sen. Byrd's case?. Or that Sen. Metzenbaum is in favor of pornography or that Sen. Sasser is a supporter of Fidel Castro or that all Rep. Coughlin has done in his years in Congress is take trips or that Sen. Goldwater either favored the Ku Klux Klan or putting Strontium 90 in a child's drinking water supply?

This is not a self-regulating phenomenon. There are occasions -- such as when Gov. Roy Roemer chooses a month and a half before an election to eschew attack advertising or when candidate John Vinich will air an ad that is patently unfair -- that the public. having a clear choice, will, in turn, make one. But for the overwhelming majority of campaigns, what the public sees is a set of virtually indistinguishable (in type) ads which cast aspersions on all candidates and invite the response the public is increasingly witnessing. The electorate is voting with their bottoms -- they are turning off, tuning out and sitting out elections in ever-increasing numbers and frequency.

Nor can this be regulated through some kind of Fair Campaign Practices agency such as existed two decades ago. The sheer volume of such ads perhaps 2,000 nationally in a single day. and their emotive appeal makes rational review impossible. Nor can an address that is limited to the federally funded Presidential campaigns have much utility since the bulk of the problem. expenditure and air pollutions lies for offices below the level of President.

Similarly an approach which would address the accountability problem simply by putting a candidate's name and picture on an ad will not suffice as witnessed by the recent campaign -- one of the more vicious in recent memory -- between Sen. Connie Mack and former Rep. Buddy McKay in which such a law was operative. Nor can one tie regulation to the lowest unit rate or public financing of federal campaigns below the Presidential level when such rates and financing are harder to enact than media regulation and when a candidate might be likely to foreswear such rates and financing in the pursuit of victory and use the more demagogic advertising formats.

All of which is to suggest strongly that this is a problem which much be addressed head-on.

It must be addressed head-on because of a number of important and specific threats to the health and welfare of American democracy which include but are not limited to

1.Turnout: While, in part due to my not so gentle ministrations in the field of publicity. it has become generally known that American turnout is low and has been declining for nearly three decades what is generally not known is that it has been declining while almost every political and demographic indicator says it should increase.

Since the 1960's we have substantially liberalized our laws governing registration and voting and our turnout has gone down. Academic theory has it that people who are better educated more stable and older tend to vote. Yet. twice as many Americans are now attending and graduating college than did so in the 1960's, we are a generally less mobile society than we were in the 1960's and the population has been aging since 1971 and our turnout has gone down.

Our politics has also become more competitive. Forget what one reads about 98 percent re-election rates for the U.S. House of Representatives. The fact is that for the races that draw the highest level of turnout -- President, U.S. Senate and governor

-- races are more competitive because there is no longer a one-party South. There is no state in which a statewide race is not potentially competitive. And still turnout goes down.

In 1986 there were 24 statewide races which were decided by a margin of 54-46 percent or less and turnout was down in 16 of them. In 1988, there were 11 such contests, all of which showed a decline in voter participation.

In 1982 there was a fairly close race between former Gov. Edmund G. Brown Jr. and present Sen. Pete Wilson in which $13 million was spent and about $7 million on television advertising. In 1986, the contest between Sen. Alan Cranston and former Rep. Ed Zschau was much closer and nearly double the amount was spent both overall and on television advertising and that contest had the lowest turnout for a U.S. senate race in the state's history. In Missouri more money was spent in 1986 than in 1982 both overall and on media in the contest between Sen. Christopher Bond and Harriet Woods than between Sen. Danforth and Ms. Woods and turnout was lower in 1986. The 1986 contest between Gov. Clements of Texas and former Gov. White was both more expensive and more demagogic and occasioned lower voter turnout.

In 1989, substantially more money was spent on the race to replace Secretary of Defense Richard Cheney in Wyoming than had ever been spent before on one race in that state and turnout was by a margin of 20 percent lower than for any race for governor, senator or representative in that state's history. In Virginia this year, more than $10 million in campaign expenditures, largely used for demagogic television produced a turnout in that state's Republican gubernatorial primary nearly 20 percent below the average turnout for statewide primaries in the year with the lowest turnout 1986.

There are, of course, exceptions to the rule that massive media campaigns of the demagogic attack type produce lower turnout. The 1984 race between Gov. Jimmy Hunt and Sen. Jesse Helms, one of the most expensive and meanest in history, produced a record high turnout. But in this case, one was dealing with the two most highly recognized figures in the state, backed by large and long-standing political organizations and with substantial and deeply felt (by the electorate) differences between the two men. All of which likely had more to do with the level of turnout than either expenditures or advertising.

But for the overwhelming majority of campaigns, the consultants do their job successfully. By depressing turnout for the opposition in a race in which each campaign seeks to depress the turnout for every other competitor, turnout declines.

In the 1986 campaign in which neither party offered issue, theme or substance to the national debate and the campaign was conducted almost exclusively on the basis of demagogic commercials. there was according to polling data supplied me by the Republican National Committee, a 10 percent increase in negative attitudes towards candidates which coincided nicely with a 10 percent declined in voter turnout.

If allowed to continue. this type of campaign will make the question, "Suppose we held an election and no one came? no longer a rhetorical exercise.

In a sense that is both larger and more precise, one of the best academic books on the causes of declining voter turnout in America, Ruy Teixeira's **Why Americans Don't Vote** traces three primary causes for the decline in participation -- 1. a decline in citizen feelings of efficacy about their vote or whether their vote makes a difference; 2. a decline in allegiance to and strong feelings for either of the two major political parties; and 3. a decline in newspaper reading as a primary source of information about politics.

Could it be that, in part underlying each of these causes lies the rise of political advertising on television -- 1. in the increasing demagoguery and trivialization of our politics that makes the perceived stakes not worth the effort to participate; 2. in parties without enduring messages or messages that are determined by pollsters and hucksters at any given moment; and 3. in information fed in short messages and sound bites which bear little relation to the concerns of the citizen or the problems they see?

2.Cost: There is no question that the spiralling cost of campaigns is directly attributable to the increased use of television advertising in general and the widespread belief that demagogic advertising works.

My committee has been tracking spending on the five most expensive campaign for the U.S. Senate in each election year since 1974 and for the competitive Senate races since that year. Some sample returns from these studies might be instructive:

--In 1974, the average cost of the five most expensive Senatorial campaigns was $1 million or $0.67 a vote. By 1984, the average cost was $10 million or $7.74 a vote.

--In 1974 the average amount spent on television advertising in these campaigns was $350 000 or $0.12 a vote. In 1984, the average spent on political advertising on television was $5 million or $3.54 a vote.

--In these most expensive campaigns overall cost increased ten-fold (five-fold in constant dollars), while media spending increased more than 30-fold (more than 15-fold in constant dollars).

--The increase in media spending, it should be noted, was more than double the increase in rates charged for political advertising.

[It should be noted that in the absence of a Sen. Jay Rockefeller who spent more than $32 a vote in 1984 and of a race of the likes of Hunt-Helms, both spending and media spending in the most expensive races in 1988 was slightly lower, but that fact was more than compensated by the rise in spending in competitive races.

--In 1974, candidates in competitive races for the U.S. Senate spent nearly $8 million overall (a little less than $1 million per race) and approximately $0.66 a vote. They spent $0.21 a vote on media.

--In 1986, candidates in competitive races spent more than $50 million (or more than $8 million a race). This resulted in a cost of $4.18 per vote in overall spending and $2.27 per vote in media spending.

--In 1988, candidates in competitive Senate races spent nearly $53 million overall (more than $7 million a race). They spent $4.41 a vote overall and $2.55 a vote for media.

--Thus, in competitive races overall cost has increased about seven-fold while costs attributable to media have increased nearly 13-fold (3.5-fold and 6.7-fold in constant dollars.)]

The conclusion is inescapable. Unless the use of television in the modern campaign is brought under some reasonable control, access to politics will only be available to those who either possess great wealth or have acess to and are potentially beholden to such wealth.

At a time when partisan perceptions of self-interest prohibit agreement on other aspects of campaign finance reform, regulation of television advertising, in view of its pernicious effects regardless of person or party, may be the only way to begin to end the upward spiral of campaign costs.

3. Allocation: -- One nexus between the impact of political advertising on campaign cost and the impact on turnout lies in the allocation of campaign resources.

In 1974 competitive Senate campaigns allocated 31 percent of their resources to political advertising. In 1988 more than 57.9 percent of every campaign dollar was allocated to television advertising. These figures are exclusive of fund raising costs.

This means that for the average campaign for which television is seen by the consultant who runs as the primary tool for its conduct, nearly 90 percent of the campaign budget is devoted to television advertising or fund raising for it.

This, in turn, leaves only 10 percent of the campaign budget for such things as candidate travel, speech writing, press and public relations and staff. And it means that nothing or next to nothing is spent on any activity that involves the citizenry.

It is thus no wonder that we have developed the political equivalent of the Silent Spring in American politics, in which there are no longer buttons and bumper stickers phone banks and field organizations, volunteers and participants. We manipulate our citizens. we do not involve them.

4. Institutions: -- If, as political scientist Ruy Teixeira has suggested, one of the principal reasons for declining turnout is decline in allegiance to the major political parties, then this too can in part, be traced to political advertising.

For, on the one hand it used to be true that candidates were nurtured by the party, trained by its leadership to state and national leadership dependent on local party organization for electoral success and beholden to the party once in office in such a way that permitted some discipline on principle and program. Now, a candidate seeks money, a pollster and a media advisor and arrives in Washington, dependent only on polls and constituent service for his continuance in office.

On the other hand, once the parties stood for some core of policy and principle. Now their advocacy, nationally and locally, is determined by the same pollsters and media advisors that run individual campaigns. The parties have become little more than campaign service agencies and both individually and collectively there is little reason for enduring citizen allegiance to either candidate or party.

This transcendance of party in favor of media consultants enhances the centrifugal force of special interest. weakens the forces of popular mobilization, both within parties and among other organizations and lessens what little stability and cohesion exists within the American political system.

5. Leadership: -- It can also be said that the current system of campaigning through consultants polls and demagogic advertising weakens the impulse to political leadership.

When once it was the business of leadership to determine what policies were right and wise and then find ways of educating the electorate to their enactment and implementation, it is now the custom to poll the electorate to find out what to say in the first place. Policy, thus is too often determined by poll rather than by principle or need.

6. Policy: -- This, in turn, has the effect of restricting policy options. Reasonable people can disagree about whether Social Security was intended as an inalienable right for all Americans and therefore should not be tampered with or whether it was intended as insurance for those less fortunate and thus can and should be either taxed or means tested. But in the face of the potential of a demagogic commercial showing a poor grandmotherly looking woman with a voice-over saying, Senator X voted to cut your mother's Social Security, the debate over Social Security's future never gets beyond a narrow range.

Similarly with regard to the recent Supreme Court decision on flag burning, while almost all Americans find the act of burning our nation's symbol foolish, extreme and abhorrent, reasonable people can disagree about whether the Court acted wisely in protecting even this extreme form of speech in order to protect the principle of free speech. But because of the demagogic potential of this issue in next year's political campaigns, the choice in public policy terms has been narrowed to legislation outlawing flag burning or a Constitutional Amendment which would have the same effect.

7. Political Choice: -- The same principles apply with regard to the political marketplace. For eight years, Richard Lamm was seen not only by the nation-at-large but by his constituents in Colorado as an able and innovative governor. After serving his legally alotted two full terms he moved to private life while in his forties. Next year, only four years his departure after from office there is a vacant Senate seat due to the impending retirement of Sen. Armstrong. Under the normal course of human events the combination of high name recognition, warm public sentiments and human ambition would have propelled Gov. Lamm into a quest for that office.

But shortly after he left the governorship, he spoke to a group about health care, the elderly and the problems of triage when Americans get old. He now faces the likelihood of a demagogic commercial showing another grandmotherly old lady and a voice-over saying, "Gov. Lamm said your mother has a duty to die." He has chosen not to run.

We, of course, do not know how many Americans capable of great leadership have chosen not to run because of something that they have once said or done might be taken out of context, used and magnified in a demagogic advertisement and served to ruin, uneccessarily their personal, professional and political reputations. But we do know, that the present system of distorted and demagogic advertisements cannot help but serve to restrict citizen choice and constrict the reservoir of political leadership.

8. Careers: -- Public service can and should be a noble profession. Elective office, while often requiring sacrifices of money. privacy and time, ought to also offer the promise of reasonable continuity unless the office-holder commits an act of moral turpitude, fails to effectively carry out his duties or if the public. which elected him or her, differs with him or her on either a major issue or general political perspective.

Before the onslaught of demagogic advertising, an office-holder could count on a reasonable degree of continuity. And the public, faced with either acts of moral turpitude (e.g. Watergate). major issues (e.g. Vietnam) or changes in mood (e.g. late 1960's and early 1970's excesses) found no difficulty expressing their view and removing those in office without the benefit of the hucksters' ministrations.

Lately, however. no office holder is safe. Because of the power of television, trivial issues can be magnified into large ones and honorable careers can be imperiled. The classic example is, of course, the ad series run by Sen. Mitch McConnell against former Sen. Walter D. Huddleston. In that set of ads, a set of bloodhounds sniffing at the end of a long leather leash for Sen. Huddleston, first on Capitol Hill, then through the woods finally finding him on the beach in Acapulco. The impression given was that here was an absentee, junketeering Senator.

We are talking, however, not about an absentee, junketeering Senator. but about one who had a 95 percent attendance record, who was seen by his colleagues as hard working and who, if he had any major failing, might have been seen as lacking flash or color.

But one cannot argue with the emotive effect of a bloodhound. As Richard Nixon found out, saying I am not a crook, does not cool the emotional fires set off by other things. Nor does saying. I have a 95 percent attendance record.

It should be noted that one election later, Sen. Wendell Ford found an effective anti-dote to a McConnell-type commercial by showing a pet hound staying with him while he worked late in his office. But the fate of our leadership should not be decided by whether one's media consultant is as or more effective than the media consultant of the opposition.

A leader should be judged on his positions on issues, his character and his conduct in office. And non-incumbents should have to fashion victory the old-fashioned way. They should earn it.

9. Accountability: -- Conversely, icreased dependence on demagogic televised advertising which enhances the power and influence of media consultants detracts from the ability to hold office-holders accountable.

A media consultant is not by nature accountable to the electorate. He or she makes his or her living and insures his future by winning elections for the clients he or she is hired by. He or she can and does use whatever techniques and strategems are likely to benefit the candidate whether those strategies and tactics are ethical or not.

By using techniques such as actors playing parts, demagogic scene setting, impersonal voice-overs, anonymous commentators, emotional music, etc., the consultant can and increasingly frequently does establish the terms of debate in such a way that the client escapes responsibility for what is conveyed and in terms that are unanswerable by the opposition, except by resorting to precisely the same techniques.

So what has developed in these United States is a competition, not between parties, principles, proposals or candidates, but between media advisors who compete with each other to see who can outslick the other and win. And in the continued absence of candidates with the courage or character to tell these consultants that they are ruining our political system and that they ought to shut up and go home, the public has no one to hold accountable.

10. Independent Expenditures -- Some years ago, the Supreme Court in **Buckley v. Valeo** ruled, I believe rightly, that organizations independent of candidate and party had a right to participate in the political dialogue. It did not, however, rule that these organizations had a right to dominate the dialogue.

While not denying these independent organizations the right to participate in the debate, their participation should be in the nature of debate lest our polity be dominated not by responsible candidates and political parties, but by fringe and splinter groups with the wherewithal to buy time, place demagogic commercials and drive a dialogue away from the issues of common concern.

11. Speech: -- I have not in this testimony (or for that matter in anything I have said in the last ten years during which I have addressed this issue) stressed the words, "negative ads." I have made this ommission advisedly.

For in any campaign, the opponent's character, record values, issue positions and advisors are all legitimate subjects for campaign debate.

But what we have been witnessing in our campaigns has been the antithesis of debate. Distortion and demagoguery have displaced debate and discussion, actors playing parts have replaced the real actors in American politics. anonymous voice-overs have replaced accountable politics, emotionalism has replaced answerability.

The issue of speech and Freedom of Speech is at the heart of what we are discussing here. I am not a Constitutional lawyer or a specialist in civil liberties law. But I yield to no one in my belief that it is our First Amendment freedoms that differentiate this democracy from all others and makes it superior.

It is, however, my belief that the framers of the First Amendment sought to promote debate rather than to undermine it. They would have, I believe encouraged the broadest set of policy options rather than campaign conduct which constricts those options. They would have encouraged the rough and tumble of debate, but they would, I believe, have wanted that debate to be joined.

Which is the point at issue. For a reasonable case can be made that the present system of unregulated political advertising on television undermines debate and the intent of the framers of the First Amendment.

I do not believe that the framers of our Constitution envisaged freedom of speech for talking cows or for actors playing Fidel Castro or for bloodhounds trailing office-holders. When we moved into the television age we took a quantum leap into technology.

For television is not simply another mode of communication. It is to conventional means of communications what nuclear weapons are to conventional weaponry. It adds a whole new and potentially destructive dimension to the issue of communications through the manipulation of emotions. And to carry the analogy one step further it may be desirable to regulate the use of conventional weaponry; it is essential to the welfare of mankind to regulate nuclear weapons. Similarly while it is probably not desirable to regulate any other means of communication in politics, it may be essential for the health of both politics and meaningful free speech to regulate political advertising on television.

The Supreme Court in its **Red Lion** decision has recognized that because of two factors -- limited access to the medium and pervassiveness of reach -- the First Amendment claims of television may be restricted to a greater degree than other mediums. The proposals being considered in this hearing are nolt designed to undercut free expression of views but rather to liberate that free expression from the cloud of image making and unanswerable demagoguery that is the current mode of communication.

Thus, whether one shares my view that the Constitutional issue of free speech cuts, in this case, in favor of regulation of the demagogic nature of the current advertising in order to protect larger concepts of speech or simply believes that the downside costs of continuing to conduct or politics in the manner we have -- in spiralling campaign costs, diminished citizen participation, eroding political institutions, constricted policy and candidate options, lack of accountability and answerability -- the case for constructive regulation is clear.

Indeed, it represents a part of the fundamental issue of our age. Technology and science grow like topsy, but not all of that growth constitutes progress. The fact that children today now spend their summers freed from the fear of polio and that breast cancer is almost completely curable attests to the fact that science and technology can produce progress. The fact that our air is foul, our cities have been decaying and that the incidence of cancer increases at a rate of one percent a year bears testimony to the fact that all products of technology do not constitute progress.

The task of government is to sort out what is beneficial to society and encourage its growth and conversely to determine what may pose hazards to society and control our curtail its growth. The current use of paid television in politics falls into the latter category.

To put it perhaps more mundanely, in baseball we do not allow pitchers to throw balls intentionally at batters; there is something called unnecessary roughness in football; spearing in hockey hitting below the belt in boxing, etc. There seems to me to be no more important game and higher calling than politics and it too needs reasonable boundaries for its conduct.

We need quite simply to restore a degree of probity to our politics, civility to our debate, and accountability to our political process.

It is my hope that S. 999 will be reported out of this subcommittee and its parent committee favorably and that, with it as a base the full Senate will work to insure the most effective and Constitutionally defensible bill to address the issues before this hearing.

I would like to thank the committee again for inviting me and ask for the inclusion in the record what the committee deems relevant of the materials appended to this testimony and which is in the hands of committee staff, including

1. A study, commissioned by my committee and conducted by Austin Ranney and Howard Penniman, on the regulation of advertising in other democracies.

2. A copy of S. 577 from the last Congress representing an alternative approach to the problems this hearing confronts.

3. A few articles relating to issues before this hearing.

THE REGULATION OF TELEVISED POLITICAL ADVERTISING IN SIX SELECTED DEMOCRACIES

A Report Prepared for
The Committee for the Study of the American Electorate
Curtis Gans, Director

By

The American Enterprise Institute for Public Policy Research
Howard R. Penniman and Austin Ranney, Investigators

1. INTRODUCTION

In every advanced industrial nation television has in the past twenty years bcome the principal medium of mass communications. A large number and variety of scholarly studies in various countries have shown that significantly more people in all industrial countries now get most of their information about politics and public affairs from television than from any other source, including newspapers, radio, magazines, books, movies, and even private conversations with parents, siblings, friends, and workmates. Accordingly, the conditions of ownership and operation of this powerful medium, and the rules and regulations under which it is operated, are bound to have an impact of great importance on the conduct of political affairs in all such nations.

In this report we are concerned with one aspect of this vast subject. We will focus upon the nature and regulation of political advocacy broadcast by television -- that is, on all speeches, campaign events, films, videotapes, graphics, and other materials by which political parties and candidates seek to win the viewers' support. This includes not only "political advertising" in the sense, normally used in the United States, of a message by a party or candidate presented on time purchased for the purpose on a commercial station or network; it also includes what parties and candidates do in the free time that may be allocated to them by public and private broadcasters as the result of some legal requirement or broadcaster's policy.

Our report will deal intensively with six selected democratic countries -- Canada, France, the Federal Republic of Germany, Italy, the United Kingdom of Great Britain and Northern Ireland, and Venezuela. To put their arrangements in proper perspective, however, Table 1 provides summary information on television ownership and the status of commercial advertising in television on thirty-two nations generally regarded as democratic.

As the data in Table 1 show, in sixteen of the thirty-two countries covered here all television is publicly owned and operated, and in the other sixteen some broadcasting is publicly owned and operated and some is privately owned and operated. The table also shows, however, that some all-public systems accept some commercial advertising. The result is that such advertising is accepted to some degree and under some conditions in twenty of the nations, and in only twelve is there no commercial advertising of any sort under any conditions.

Table 1 also shows that all six of the countries we have selected for intensive investigation allow some commercial advertising on television under some conditions, and therefore at least one necessary precondition exists for some form of political advertising and for the regulation of such advertising.

In the remainder of this report we shall, first, present the main information for each of our six countries on each of a number of questions about televised political advertising, and in our concluding section we shall present an overall summary of the situation as it exists in these countries.

Table 1

Television Ownership and Commercial Advertising in Democratic Nations

	Ownership of Television		Some Commercial Advertising?	
Nation	All Public	Mixture of Public and Private	Yes	No
Australia		X	X	
Austria	X			X
Belgium	X			X
Canada		X	X	
Colombia		X	X	
Costa Rica		X	X	
Denmark	X			X
Ecuador		X	X	
Finland		X	X	
France		X	X	
Fed. Rep. of Germany	X		X	
Greece	X			X
Iceland	X			X
India		X	X	
Ireland	X		X	
Israel	X			X
Italy		X	X	
Japan		X	X	
Mexico		X	X	
Netherlands	X		X	
New Zealand		X	X	
Nigeria	X			X
Norway	X			X
Peru		X	X	
Portugal	X			X
Spain	X			X
Sri Lanka	X			X
Sweden	X			X
Switzerland	X		X	
United Kingdom		X	X	
United States		X	X	
Venezuela		X	X	

Source: The Europa Year Book 1983: A World Survey (London: Europa Publishers, Ldt., 1983), 2 vols.

2. OWNERSHIP OF TELEVISION BROADCASTING

Canada

Television broadcasting in Canada has both a public and a private sector. The public sector is not entirely noncommercial, however, since the Canadian Broadcasting Corporation (CBC) derives part of its revenues from accepting a limited amount of commercial advertising. In 1982, for example, the CBC received 18 percent of its total income from advertising revenues. The public sector in television was once predominant, but that is no longer the case. At the present time its broadcasts attract only about 20 percent of the total viewers, and the remaining 80 percent watch programs broadcast by the commercial stations.

The Canadian Broadcasting Corporation was created and its charter is periodically renewed by acts of Parliament. The Canadian Parliament directly controls the CBC's finances, overseeing both its revenues and expenditures (whereas the British Parliament, as we shall see, has no direct control over the British Broadcasting Corporation's finances). Privately owned broadcasting stations are licensed and regulated by an entirely separate agency, the Canadian Radio-Television and Telecommunications Commission (CRTC), whose members and chairman are appointed by the cabinet of the federal government in Ottawa. These arrangements result in three parallel and separate broadcasting groups: (1) the CBC's national network, (2) the privately owned CTV national network, and (3) a number of independent private stations. Some of the latter are affiliated with the CBC, use some CBC programs at no cost, and the CBC shares in any commercial revenues received by the stations in connection with CBC programs. The commercial stations and networks, of course, receive all of their revenues from commercial advertising. Thus television ownership in Canada is a mixture of public and private ownership, with the privately-owned stations now attracting four-fifths of the audience.

France

From 1945 to 1982 French radio and television broadcasting operated on the principle, established by law, of government monopoly over all forms of broadcasting. There have been three networks (*chaines*), all government-owned and operated: TF 1, A 2, and FR 3. They have been operated under the direction of the ORTF (*Office de la Radio-Television Francaise*), which in turn was administratively supervised by the Ministry of Information.

In 1982, however, a new law was enacted abolishing, in principle, the state monopoly over all aspects of television. Under the new law the state retains a monopoly over the physical transmission of all television signals, but the editorial control of the content of programs and decisions about what programs will and will not be broadcast is now to be opened up to the private sector. Many of the new arrangements to be made under this law are still in the process of being formulated, and it is too soon to say anything in detail about what they will be. For our purposes, it is enough to note that the all-public nature of French television which existed from 1945 to 1982 is now at an end, and the private sector will play a significant role in the future of French broadcasting.

Germany

The Federal Republic of Germany is the only one of our six countries in which all television broadcasting is still publicly owned and operated. It is important to note, however, that the ownership and control of television broadcasting is quite decentralized and is not dominated by the federal government in Bonn. There are nine regional public corporations, headquartered in Hamburg, Bremen, Cologne, Frankfurt-am-Main, Saarbrücken, Baden-Baden, Stuttgart, Munich, and West Berlin. All nine corporations are constituent members of a coordinating umbrella organization, ARD (Arbeitsgemeinschaft der öffentlichenrechtlichen Rundfunkanstalten der Bundesrepublik Deutschland). In 1961 a tenth public broadcasting corporation was established; generally referred to as ZDF (Zweites Deutsches Fernsehen), it is responsible solely for national television broadcasting and has its headquarters in Mainz.

All ten public corporations are modeled more or less closely on the British Broadcasting Corporation. The ARD umbrella organization has a director-general, an administrative council, and a broadcasting council. The director-general is very powerful, as is his counterpart in the BBC, and the broadcasting council plays a major role in setting the policies, electing the director-general, and supervising programming.

The members of each regional corporation's council are selected according to rules laid down by the Land (the equivalent of an American state in the German federal system) government. Some Länder use the "proportional" method, whereby members are chosen by the Land parliament with a view to reflecting the balance of political party power in the parliament. Others use the "corporatist" method, whereby functional groups, such as trade unions, employers organizations, churches, the press, etc., each have the right to elect a member of the council. Only in the case of the ZDF does a national body, the minister-presidents of the Länder, choose the council, composed of functional groups as well as political representatives according to their strength in the federal parliament.

Note that the regional corporations, while quite independent from one another, can and often do enter into "treaties" (similar to our interstate compacts) in which they agree upon a national policy. But the federal government in Bonn plays a minor role in German broadcasting.

German television viewers have a choice among three television programs. The first is a national program jointly produced by the nine regional corporations. The second is also a national program produced by the ZDF. And the third is regional in scope, and is often referred to by the name of the region, such as "West 3" or "Nord 3." Responsibility for the third program in each region is in the hands of that region's broadcasting corporation.

Although there is some advertising revenue, most of the revenues for German broadcasting come from annual license fees paid by owners of radio and television sets. They pay these fees directly to the national Post Office, which deducts its expenses and then assigns 70 percent of the remainder to ARD for distribution among the nine regional corporations and 30 percent to ZDF.

Italy

There are effectively two television systems in Italy, one government owned, operated, and regulated, and the other privately owned and largely unregulated. The official system, established in 1952, is operated by *Radiotelevisione Italiana* (RAI). This is an independent public corporation, organized on the BBC model, established as part of a large government-private conglomerate called *Istituto Recostruzione Italiano* (IRI).

The Italian government contracts with RAI to provide broadcasting services. The RAI's income is derived from set license fees, fees from government, and from a certain amount of commercial advertising that it broadcasts. In 1981 such advertising provided about 28 percent of RAI's income.

For many years RAI's monopoly produced "wildcat" or "outlaw" stations, which simply appeared on the air and began broadcasting. The government always brought prompt action against them, and the courts upheld the government's monopoly and closed down the local private stations. In a landmark decision in 1976, however, the courts held that the government's exclusive right to broadcasting applied only to nationwide broadcasting and that private companies could provide local broadcasting. This decision produced an explosion of _privata_ (privately owned and operated) local stations, which have operated without any kind of national or local regulation. In recent years, however, the marketplace has had some regulatory effect, many local stations are combining into regional networks, and most observers predict that within a few years there will be only four or five such regional networks.

In Italy, therefore, all nationwide broadcasting remains a national government monopoly, but in the localities and regions there are now many privately owned and operated stations and networks.

United Kingdom

Television in Great Britain is broadcast on four channels, two of which are owned and operated by the British Broadcasting Corporation (BBC), a public corporation created in 1926 that has served as the model for several other nations. The other two are owned and operated quasi-commercially by the Independent Broadcasting Authority (IBA), the successor to a body (ITA) first created in 1954.

The BBC is administered by a board of governors, whose members are appointed by the national government's cabinet. The board sets the general policies for the corporation, chooses the director-general, a very powerful and influential official, and generally "acts as trustee for the national interest in broadcasting." It receives no money directly from Parliament, and its revenues come from two sources: the license fees paid annually by owners of radio and television sets, and by fees the BBC receives from selling the programs it produces to broadcasters in other countries, such as PBS in the United States.

The IBA is authorized to own and operate television transmitters for the exclusive use of private, commercially-supported broadcasting. It does not itself develop programs; rather it licenses program contracting companies, regulates their output, and pays them fees for the programs IBA decides to broadcast. IBA is controlled by a board of governors who are appointed in the same manner as the BBC's governors. To date IBA has enfranchised twenty producing companies, some of the best known of which are Granada Television, Thames Television, and London Weekend Television.

IBA is supported entirely by revenues from the advertising time it sells to commercial advertisers.

Venezuela

Like all of our other countries except Germany, Venezuela has a mixture of private and public television broadcasting. Channel 2 and Channel 4 are owned by two large family-controlled industrial organizations and are operated for profit. Channel 5 and Channel 8 are owned and operated by the government and managed by the Ministry of Information. All four channels are operated out of Caracas, and there are at present no local broadcasting networks or unaffiliated local broadcasting stations.

Summary

In legal principle, only the Federal Republic of Germany makes television broadcasting a public monopoly. In France the long-established principle of public monopoly was ended only in 1982, but the new structure of mixed public and private broadcasting has yet to be established fully. In Italy nationwide television broadcasting remains a public monopoly, but local and regional commercial stations and networks broadcast local and regional programming. In Canada, the United Kingdom, and Venezuela there is a mixture of public and private broadcasting at both the national and local or regional levels.

3. REGULATION OF TELEVISION BROADCASTING

Canada

In Canada, as in every other nation with some privately owned and operated television broadcasting, the private broadcasters as well as the public broadcasters operate under some kind of government regulation. Canadian broadcasting, both public and private, is regulated by the Canadian Radio-Television and Telecommunications Commission (CRTC), an independent agency established by Act of Parliament, whose chairman and members are appointed by the cabinet of the national government in Ottawa. The CRTC issues and renews licenses to private broadcasters, sets guidelines for their operations and programming, and in general is quite similar to the American Federal Communications Commission in its authority and operations.

France

Under the 1982 law (see above), the top national agency regulating television broadcasting in France is the Haute Autorité de la Communication Audiovisuelle (HACA). It has nine members, three named by the President of the

Republic, three by the President of the National Assembly, and three by the President of the Senate. The members of HACA serve nine-year terms, they cannot be removed during their terms (a provision intended to ensure the independence of the agency from political control -- a matter much debated in earlier discussions of French television), and they cannot serve second terms. HACA is authorized to select many of the top administrators of the organizations of the three national societies that produce radio and television broadcasting. It fixes their governing rules, including those that concern the expression of political opinions, and it also regulates advertising rates and other aspects of both public and private broadcasting.

The principal advisory body is the Conseil National de la Communication Audiovisuelle (CNCA). It has forty-nine members, and each of seven constituent organizations names seven members: there are delegates from the regional committees, representatives of professional organizations, representatives of consumer organizations, representatives of radio and television workers, representatives of commercial radio and television enterprises, representatives of the cultural and scientific world, and representatives of the major philosophical and religious movements. The CNCA has no regulatory power, but it is charged with monitoring the content of radio and television programming and making recommendations to HACA about necessary changes.

Germany

In the Federal Republic of Germany, the regulating of radio and television broadcasting, which, as we have already seen, is a public monopoly, rests largely with the ZDF and nine regional corporations and the Länder parliaments which create and supervise the latter. The federal government in Bonn plays only a minor regulatory role, with the Post Office having certain technical supervisory duties. A much more important role is played by the federal courts, which have the authority to review the regulations and decisions made by the regional corporations to make sure that they are in compliance with the provisions of the federal constitution. The courts are particularly important in reviewing the rules of the Länder governing the allocation of free time to political parties during election campaigns. The courts also have the power to enforce the legal requirement that different views are presented on programs dealing with political questions. Most of the detailed regulation, however, is decentralized and remains with ZDF and the nine regional corporations.

Italy

All national television broadcasting is operated by RAI, and for the most part it acts as its own regulating agency. Under certain circumstances, particularly election campaigns, RAI's political programming is supervised by a special parliamentary "watch-dog" committee.

At the present time there is no regulation of local commercial broadcasting other than general laws against obscenity, libel, slander, and the like.

United Kingdom

The BBC's operations are broadly governed by statute and specifically regulated by its board of governors. In 1981 the Home Secretary appointed a special Broadcasting Complaints Commission "to investigate complaints of unfair treatment to participants in a programme, or unwarranted infringement of privacy in the obtaining of material included in programmes." The commission is authorized to hear complaints about both the BBC and the IBA. To date it has been largely inactive.

In the 1926 legislation establishing the BBC the Home Secretary was given the power to request that the BBC not broadcast a program it had scheduled but which the Home Secretary believed to be against the national interest. This so-called "reserved power" of the Home Secretary was extended to IBA, but it has never been invoked against either the BBC or the IBA.

IBA is itself a regulatory body. The Television Act of 1954 requires it "to ensure that the programmes provide a proper balance of information, education, and entertainment; a high general standard in all respects; and, so far as possible, accuracy in news, impartiality in matters of controversy, and maintenance of good taste." IBA has the power to refuse to broadcast a particular program, and also to refuse to renew the franchise of a producing company which it feels has been producing programs of substandard quality.

In addition, the Representation of the People Act, Section 9, requires that if one candidate "takes part in" a broadcast report on a particular parliamentary constituency, then either all the other candidates for that constituency must take part, or they must sign waivers giving their permission for the others to take part without them. The courts have ruled that this regulation does not cover interviews arranged and controlled by broadcasters, and that to be shown on a news program does not necessarily mean "taking part" in it. So far no equal-time claim has been successfully made under this provision, and in any event it applies only to individual candidates in particular constituencies, not to national parties and national broadcasts.

Venezuela

The two government channels, 5 and 8, are managed by a section of the Ministry of Information. The two commercial channels are regulated by the

Ministry of Communications of the national government. The Minister of Communications, who serves at the pleasure of the president of the Republic, possesses the final word concerning the enforcement of regulations of the broadcast industry laid down by the president, the congress, and the ministry.

Summary

In four of the five countries which have some commercially owned and operated television broadcasting there is a national regulatory agency that oversees and regulates their activities (Italy has none). The most common types of regulations govern such matters as the proportion of braodcasting time taken up by commercials, the time of day ("prime time" or not-prime-time) in which commercials can be broadcast, the proportion of public broadcasters' revenues that may be obtained from broadcasting commercials, and the avoidance of offensive material of various kinds in the commercial messages. There are also a number of regulations governing the broadcast of political materials, which we shall review in detail in a subsequent section.

4. STATUS OF COMMERCIAL ADVERTISING

Canada

There is a good deal of commercial advertising on Canadian television. Not only do the commercial stations, which attract about 80 percent of the viewers, broadcast commercial advertising but so also does the Canadian Broadcasting Corporation and its affiliated stations.

France

Commercial advertising (publicité de marques) was not permitted on French television until 1968. In that year, after decades of sharp debate over the issue, the government decided to allow some advertising on the three state-operated channels and to use the revenues to pay part of ORTF's costs.

In 1974 a law was enacted requiring that all television advertisements be approved in advance of their being broadcast. The screening agency was the French Administration of Advertising (Regie Francaise de Publicité), whose rules stipulated that advertisement should "be compatible with the exercise of the mission of public service. Advertising messages should not contain any element or material of a nature to offend moral, religious, philosophical, or religious convictions of the audience," or anything that would bring discredit to the nation's constitutional regime.

Prior to 1982 a legal ceiling was placed upon the amount of advertising each of the channels were allowed to broadcast. The basic rule for networks 1 and 2 was that no more than 25 percent of their revenues could come from commercial advertising, and commercial advertising was banned altogether on network 3.

The law of 1982 has made this regulation more flexible. It provides that the premier and cabinet, with the approval of Parliament, will annually determine how much revenue can be raised from commercial television advertising and how it will be distributed among the different broadcasting agencies. It also raised the ceiling considerably by providing that no more than 80 percent of the networks' revenues can come from commercial advertising. According to our informant, the ceiling, though considerably raised, was retained partly because the government wished to avoid destabilizing the advertising market and partly because it wished to preserve a certain equilibrium in that market so that the print media would not lose most of their advertising to television.

The volume of advertising on French television is still limited compared with that in many other countries. For example, in one week in 1983, the total time given to commercial advertising on the three netowrks was as follows:

Channel 1: two hours and fifty-six minutes

Channel 2: three hours and seven minutes

Channel 3: nine minutes and twenty-nine seconds.

Germany

Although all television broadcasting is publicly owned and operated in the Federal Republic, some commercial advertising is permitted even though severely restricted.

The major regulations in force at the present are the following:

1. No advertising of any kind is permitted during "the main evening programs," the equivalent of "prime time" in America. This period begins at 8:00 p.m. for ARD programs and 7:00 p.m. for ZDF programs. On Sundays and public holidays no commercial advertising at all may be broadcast.

2. Only products which are marketed nationally can be advertised on television; purely local products cannot be so advertised.

3. No advertising is permitted during programs; commercials can be shown only in periods between programs. Accordingly, in a typical weekday evening there will be four blocs of five-minute periods, and within each period there will be a succession of sixty-second commercials. All of this advertising is broadcast in the two-hour period before the "main evening programs" begin.

Advertising revenues constitute a larger part of ZDF's income than ARD's. This results from the fact that ZDF receives only 30 percent of the license fees on radio and television sets, while ARD receives 70 percent of those fees, which it distributes among the nine regional public broadcasting corporations. Accordingly, ZDF gets approximately 50 percent of its income from advertising, while the ARD affiliates get around 20 to 25 percent.

Italy

Both RAI and the private broadcasting stations and networks accept commercial advertising. In 1981 such advertising produced 28 percent of RAI's revenues and 100 percent of the private stations' revenues.

United Kingdom

From its founding in 1926 to the present time the BBC has never accepted commercial advertising of any kind, and all of its revenues are obtained from license fees on radio and television sets and from the sale of its programs abroad.

IBA, of course, does accept commercial advertising, which is the sole basis of its support. In the long debate before 1954 over whether to permit commercial advertising perhaps the leading issue was whether or not the advertisers would control the content of programs, use that control to produce only programs appealing to the lowest common tastes, and thereby debase not only the quality of television programming but the quality of British life and culture. In those debates American television programming was often used as an example of what horrors the commercial control of television can yield. Accordingly, one of the basic principles set forth in the 1954 act establishing the IBA was the complete separation of programming from advertising. The production of programs was left entirely to the regional production companies, and the choice of what programs to broadcast was left entirely up to the IBA. No advertiser was allowed to have any say whatever in the content of any program. Any advertiser is permitted only to purchase broadcasting time for showing its advertisements. Moreover, the advertisements, as in Germany, are always broadcast between programs, never during programs.

The 1954 Television Act also specifically prohibited IBA from broadcasting any material "designed to serve the interests of any political party." This, as we shall see, has made it impossible for political parties to purchase time for political advertisements during or between elections.

The IBA Act of 1973 states that IBA has a duty to ensure "that the amount of time given to advertising in the programmes shall not be so great as to detract from the value of the programmes as a medium of information, education and entertainment." Hence, while there are no formal legal rules governing the amount of advertising, the IBA conforms to this requirement of the Act by limiting advertising to a total of six minutes per hour, averaged over the day's programs, with a maximum of seven minutes in any one clock hour. No distinction is made between prime-time and non-prime-time hours.

Venezuela

The two public channels do not accept commercial advertising; the two commercial channels do. The Ministry of Communication's regulations put a limit on the percentage of prime time that can be devoted to advertising, but the limits are very high. Our informant reports that during 1980 he timed the amount of advertising in one hour of commercial television and found that it came to a total of twenty-three minutes — considerably more than would be permitted in any of the other countries reviewed in this report or, for that matter, in the United States.

Summary

Each of the six countries allows some commercial messages to be broadcast on television. In the United Kingdom and Venezuela the publicly owned and operated broadcasting systems do not accept advertising, but their counterparts in Canada, France, Germany, and Italy do. Accordingly, in all six countries at least one necessary condition exists for the broadcasting of paid political advertising. How much such advertising actually exists and under what conditions is our next concern.

5. FREE TIME FOR "PARTY POLITICAL BROADCASTS"

Generally speaking, there are three ways by which a political party or a candidate might use television to get across appeals to the voters:

1. Indirectly, through coverage of their conventions, platforms, and activities in government and in election campaigns by regular newscasts and public affairs programs broadcast and controlled by the broadcasting authorities.

2. Directly, by receiving free television broadcasting time in which to broadcast programs of their own design and production appealing to the voters for support.

We shall follow British usage in calling these "party political broadcasts" (PPBs).

3. Directly, by purchasing time on television to broadcast "political advertisements" of their own design and production comparable to advertisements for commercial goods and services.

It is the second of these methods that concerns us in this section.

Canada

The Canada Elections Act requires all television broadcasting stations to provide political parties with some free time in which to present their views on the issues of the day, but it does not specify how much time and how it shall be allocated among the parties. Over the years the CBC has developed a policy to comply with this general obligation, and the private broadcasters have generally followed the CBC's lead. Between elections the CBC provides free time to all political parties who have at least one member of Parliament. Five minutes each week on national television are allowed, and a representative of only one party appears on each broadcast. The time over the course of parliamentary sessions is allocated on the basis of 60 percent to all the opposition parties (which is then apportioned between or among them) and 40 percent to the party controlling the government. The CBC prefers that the exact allocation of time be determined by agreement among the party organizations, although it can, if it must, make the allocation for them. These broadcasts, which the Canadians call "free time political broadcasts," usually feature a leading party figure speaking on issues of current concern, and they generally draw small audiences.

In addition, there are the so-called "ministerials." The CRTC can invoke, on "instruction" from the federal cabinet, the requirement that any and all of its licensees must broadcast any program deemed to be "of urgent importance to Canadians generally" or to those resident in a particular area. In addition, the prime minister can ask for time on CBC "to raise issues of exceptional national importance in order to inform the public or seek its cooperation." When the first condition is invoked by the CRTC, no right of reply exists. The special speeches by the prime minister do carry a right to reply by the opposition, and that right has been invoked seven times in the past ten years when the official leader of the opposition and the leaders of the other parties in opposition were offered time to reply in a comparable format and at a comparable and mutually agreeable time. In all cases, it is the CBC which decides when the prime minister may appear and whether and how much time for reply should be allowed to the opposition parties.

In addition, Canada has some unique rules governing the purchase of time for political advertising by parties. We shall review those rules in a subsequent section.

France

In France at the present time there are different regulations for free access to television for candidates and parties in the two main types of elections.

1. Presidential Elections. Each presidential election in France has two stages. In the first stage any person who satisfies the rather minimal requirements (a nominating petition signed by 100 elected officials -- mayors, departmental councillors, or members of Parliament -- out of a total of 40,000 such officeholders) is placed upon the ballot. There is no requirement for nomination by a political party, and indeed it is not unknown for more than one member of a particular party to appear on the ballot. Usually ten to fifteen candidates are on the ballot. ORTF decides the total amount of television time that will be given to broadcasts by these candidates, and then divides that time into segments of varying duration. The segments are divided among the candidates by drawing lots. The total time allotted to each candidate must be equal to the time allotted to all other candidates, and it usually amounts to an hour to an hour and a half. Moreover, each candidate must have not only the same amount of time but comparable time, in terms of prime-time exposure, as the other candidates.

If no candidate receives an absolute majority of the votes in the first-stage election, which has been the case in all recent elections, a second "run-off" election is held between the two candidates who finished highest in the first-stage election. Additional television time is allocated to the two "finalists" for the second-stage election, and under the same conditions of equal and comparable time.

2. Parliamentary Elections. In parliamentary elections equal amounts of free time are given to the leaders of the governing party and to all the opposition parties taken together, with the latters' time being allocated among them according to the number of members each has in the National Assembly. Parties with no members of the Assembly are entitled to a few short broadcasts. It is also traditional for the President of the Republic to make an election-eve speech stressing the importance of the election and urging everyone to vote. Some critics have charged that these speeches have a tendency to favor the President's own party, but to date that has not prevented the President from broadcasting or given the opposition parties equal time.

As we shall see in a later section, there are certain restrictions on how the parties and the presidential candidates may use their free broadcasting time.

Germany

In Germany political parties are granted free time on television during election campaigns at the local, Land, and national levels. The governing principles have been laid down mainly in legislation by the various Länder and by "treaties" among the regional broadcasting corporations. ARD and ZDF are primarily responsible for supervising these broadcasts in national election campaigns, and the regional corporations are mainly responsible for supervising their counterparts in Land and local elections.

Although the rules vary somewhat from one Land and regional corporation to another, they are generally quite similar and the main rules are the following:

1. In order to qualify for free time a party must be officially recognized by the federal or Land election officials.

2. A party must also satisfy certain conditions of the television authorities. For example, in the case of ARD, parties must submit nominations for Land candidate-lists in all the Länder of the federation, or nominations for single-member constituencies in at least one-third of all constituencies in the country.

3. For free time on ZDF programs, a party must either be represented in the Bundestag or at least have submitted a Land party-list of candidates in at least one of the Länder.

4. In the case of each regional television corporation, a party must either have submitted a Land party-list in the region covered by the broadcast or nominations in at least one-third of the single-member constituencies in the region.

5. Parties that have received free time in the ARD national program will not also be given free time in the regional programs.

The free time for each party consists of a number of television spot broadcasts (Wahlspots), each limited to two and one-half minutes. The number of such spots is not fixed by law, which only requires the networks to provide "appropriate time." The number of spots generally varies according to the electoral strength of the parties. Fringe parties generally get one or two spots. In-between parties like the FDP and the CSU get five or six spots. And the leading parties, the CDU and the SPD, get around ten or eleven spots. Taken together, the total amount of time devoted to all PPBs on the network is generally between one and two hours.

The parties prepare their own spots in advance and must assume all the costs in their preparation. The networks decide when the spots will be broadcast, and the parties have no say over the order in which they will appear.

The law also says that ZDF has discretionary authority to grant political parties free time during periods other than election campaigns, but only parties represented in the Bundestag or in three Land legislatures are eligible. The parties have no right to demand free time, but if ZDF gives free time to one party it must provide "appropriate time" to all the eligible parties. In fact ZDF has not granted much between-elections free time, and has confined itself mainly to televising parts of the national convention proceedings of the eligible parties.

Italy

Under the supervision of a special "watchdog" committee of Parliament, RAI provides free time during national election campaigns to all eligible parties. The rules have changed somewhat from election to election, but in 1983 the oversight committee, composed of twenty deputies and twenty senators, set up a segment called "flash" (using the English word) consisting of five minutes at the end of each early afternoon news broadcast on RAI, beginning with the largest party represented in Parliament and ending up with the smallest party represented. After the early evening newscasts on the same days there was a ten-minute press conference for each of the parties, beginning with the smallest party and working up through the largest. At each press conference eight journalists chosen by the editors of eight newspapers, the latter chosen by drawing lots, interviewed a spokesman for each of the parties. In addition, each party was also given one fifteen-minute segment to deliver its message in any way it chose.

United Kingdom

In the late 1930s the British Broadcasting Corporation first instituted "party political broadcasts" on its radio network, and its arrangements became the model not only for its later policies toward television but for many other countries as well. When the BBC had adopted the general policy of permitting each of the political parties to present its case to the voters in radio broadcasts, the questions of how long the broadcasts would be, how many there would be, how they would be allocated among the parties, and what the parties would be allowed to do with their time were settled in protracted negotiations among representatives of the parties and of the BBC. The agreement reached in 1939 was for a total of twelve radio broadcasts -- five for the Conservative party, five for the Labour party, and two for the Liberal party. No other talks of a political nature were to be given during the whole election period, and outgoing Government speakers were to be given the first and last words. Other parties with more than twenty parliamentary candidates were also to be allowed short periods of time during non-prime-time hours. These policies were first used in the general election of 1945.

In 1946 a conference of Conservative, Labour, and BBC leaders reaffirmed the policies agreed upon in 1939, and they were used again in the general election of 1950. The first party political broadcasts (PPBs) on television were produced for the 1951 general election, with one each for the Conservative, Labour, and Liberal parties.

The original "white paper" of 1952 on the establishment of commercial television proposed that no political or religious programs of any kind would be broadcast on commercial television, but that principle was moderated in the Television Act of 1954, which provided that the ITA (later the IBA) would not produce any PPBs of its own but would relay the PPBs produced by the BBC. Moreover, ITA-IBA were and still are required to relay PPBs in their entirety, not to use only selected parts from them.

At the present time the regulation of PPBs is conducted by a semi-formal Party Political Broadcasting Committee, which has grown up over the years as the forum for conducting the negotiations among broadcasters and politicians. The committee consists of representatives from all of the parties with representation in Parliament, from the BBC, and from the IBA, with the Lord President of the Council, a member of the cabinet, serving as chairman. The committee acts largely on the basis of the well-established precedents, according to which the governing party and the leading opposition party are given equal time, and the Liberals receive slightly over half of the time given to the two major parties. In the 1983 general election, for example, the Social Democratic party-Liberal party alliance got almost as many popular votes as the Labour party, although far fewer seats in Parliament. In the next general election the PPBs will probably be allocated on a 5-5-3 or perhaps even a 5-5-4 formula, but that remains to be negotiated.

PPBs are of varying length, from five to fifteen minutes. In the 1983 election the Labour party made use of all of its allotted time for PPBs, but the Conservatives used only twenty-five minutes of their time -- on the perhaps sensible ground that audience surveys have shown that voters are skeptical about what they hear on these broadcasts and they may be of little help. Normally a PPB is carried simultaneously by all of the BBC and IBA channels, although this is no longer mandatory and a particular channel may show a particular PPB at a time it regards as suitable even if the others choose a different time.

Now, as from the beginning, the content of each party's PPBs is entirely up to that party, and the BBC exercises no editorial control of any kind. Both the BBC and the IBA are by law liable for broadcasts that are libelous or create other offenses, for example under the Race Relations Act; but to date no PPB has given rise to any successful suit against either broadcasting organization.

A continuing and somewhat vexing problem is how much time for PPBs should be given to the minor parties. The committee's rules now provide that in order to qualify for any free time a party must nominate a least fifty parliamentary candidates, and in the 1983 elections five such parties qualified outside of Northern Ireland (where the situation is too complicated to be dealth with here).

Venezuela

Venezuela has no law requiring either the public channels or the commercial channels to give free time to political parties or candidates during election campaigns or at any other time.

As a matter of practice, however, the public and commercial channels give the major parties and presidential candidates free exposure, almost entirely in broadcaster-controlled programs, especially "talk shows." In general each of the major talk shows on each of the channels makes an effort to allow each presidential candidate at least one opportunity during the campaign to present his views. Other important leaders of the three most dominant political parties --

Accion Democratica, the Social Christians, and the Movement Toward Socialism -- also receive invitations to appear on these talk shows. All four channels can also, at their own discretion, broadcast major campaign events such as debates between the major-party presidential candidates and the parties' national conventions.

Summary

Unlike the United States, all six of these countries, by law or by practice, provide some free time on national television for party political broadcasts, in which the parties themselves decide the programs' contents. The extent to which the parties have a free hand to do whatever they wish on these broadcasts will be reviewed in a later section of this report.

As a general rule, the amount of broadcasting time is allocated among the various parties in proportion to their electoral strength, as manifested either by their representation in the national parliament or by their share of the popular votes in the preceding general election. Some provision is also made for parties with little or no parliamentary representation. Only in French presidential elections is the free time given equally to all candidates regardless of their prospects for electoral success.

For the most part the PPBs are broadcast only during national election campaigns, although some countries, notably Canada and West Germany, have some provisions for providing free time to the parties between election campaigns.

In all six countries there is some continuing controversy about PPBs, mostly relating to the formulae for allocating time among the parties. But in all of the countries the principle that some PPBs should be broadcast appears to be a permanent part of their political communications systems.

6. THE STATUS OF PURCHASED POLITICAL ADVERTISING

Canada

Canada allows political parties to purchase time on television to broadcast political advertisements of their own production, but puts limits on the total amount of time that can be purchased for such purposes and allocates the total time available among the parties.

The rules governing the sale of political advertising time are made by the CRTC under the general principles laid down by Section 99.1 of the Canada Elections Act. The main conditions are these:

1. The CRTC now allows a grand total of six and one-half hours of party political advertising to be purchased.

2. Only parties properly registered with the election authorities are eligible to purchase such time, and the Chief Electoral Officer has some discretion in deciding whether a particular party has met all of the requirements, filing deadlines, and the like.

3. In allocating the available time among the eligible parties, the CRTC convenes a meeting of their representatives. If the parties can reach an agreement on an allocation formula, the CRTC accepts it. If they cannot, the CRTC sets the allocation on its own authority.

4. Within these limits, each party is then free to purchase as much of its allotted time as it wishes and use that time to broadcast political advertisements of its own design and production. In fact, however, none of the parties can purchase all of the time to which they are entitled and still remain within the spending limits imposed on them by the law.

In the 1979 and 1980 general elections the parties were able to reach an agreement among themselves to allocate the available time by a formula composed of the proportion of the vote each party received in the previous general elections, the number of seats it held in the national House of Commons before dissolution, and the number of candidates it had nominated in the previous election, with the first two factors double-weighted. In the 1980 election the total time was allocated among the parties as follows:

Progressive Conservatives: 143 minutes
Liberals: 137 minutes
New Democrats: 64 minutes
Social Credit: 22 minutes
Communist, Marxist-Leninist, Libertarian, and Rhinoceros: 6 minutes each.

But, for the reasons given above, no party purchased all of the advertising time to which it was entitled.

France

No political advertising time of any kind can be purchased in France, a principle that is supported by almost every party and commentators. Our informant reports that not only is the American example never held up for emulation; it is often used as an example of how purchased political advertising can corrupt the political process.

Germany

In Germany as in France, no broadcasting time for political advertising of any kind may be purchased by any party or candidate.

Our informant comments: "The reasons for this rule are much the same as those that have led to public ownership of television stations and the severely restricted nature of even commercial advertising. Since the number of channels is quite limited, broadcasting should not be governed by the principles of the marketplace. Moreover, given the potential for informing the public and enhancing 'culture' in its widest sense, broadcasting is a public trust to be operated and regulated by public authorities. If there is to be some allowance for commercial advertising, then it must be sharply separated from the preparation of programs and their transmission. On a more mundane note, if channels cannot be privately owned, then publishers [of newspapers] prefer to keep the bulk of advertising revenues -- including political advertising -- for themselves."

Italy

Although the RAI does accept some commercial advertising, it has never sold time, either spots or programs, for political advertising.

The local commercial stations, as we have seen, are barred from broadcasting any nationwide programs. They are, however, free to accept local political advertising for individual politicians, and some have taken full advantage of it. A study of the 1979 general election reports: "Certainly the most visible personality on private television was Marco Pannella [leader of the small Radical party]. Photogenic, with elegant long white hair, bright and acerbic, overwhelmingly articulate, and at war with practically every Italian institution imaginable, he put his party's total resources into the newest medium," and some observers believed that he spent more on television advertising than was spent by the entire Christian Democratic party, the leading party (William E. Porter in Howard R. Penniman, ed., Italy at the Polls, 1979, American Enterprise Institute, 1981, p. 277).

No systematic survey has been made of how many local candidates avail themselves of this opportunity, but our informant reports that other individuals in addition to Pannella purchase local advertising time as a way of giving themselves some individual attention and reputation apart from their membership on their party's large regional list of candidates. One sample of local stations showed that just over half of them broadcast some political commercials, although not very many.

United Kingdom

The BBC has never accepted paid advertising of any kind, including paid political advertising.

Although the IBA broadcasts many advertisements for commercial goods and services, the 1954 Television Act had a provision, still in force, that prohibits IBA from broadcasting any material "designed to serve the interests of any political party." This has two consequences: (1) it makes it impossible for the political parties or their candidates to purchase advertising time for political purposes; and (2) it keeps IBA from producing any of the party political broadcasts and confines it to relaying those produced by the BBC.

The upshot is that there is no purchased political advertising on television in Great Britain.

Venezuela

Venezuela is the only one of our six countries in which purchased political advertising is broadcast on a scale comparable to that in the United States. The two government channels are not permitted to carry political advertising, but there is no such restriction on the two commercial channels, which carry as much political advertising as the political parties are willing to pay for.

The parties must pay the same rates as advertisers of commercial goods and products, but there are no other restrictions.

Some of the political advertising is financed by public money. Article 155 of the suffrage law authorizes the Supreme Electoral Council to contribute directly and indirectly to the financing of the advertising campaigns of the political parties. The Council does this mainly by making general postelection grants to the parties which have obtained at least 10 percent of the votes cast in the congressional election. Since 1973 only two parties, Accion Democratica and the Social Christians, have qualified for government grants under this rule, but nevertheless several small political parties, such as the Movement of the Revolutionary Left, have received funds as well.

In the last three presidential election campaigns about 85 percent of all political advertisements have been purchased by the two major parties. It has even been said that one or another of the major parties has also purchased some time for advertisements by one of the minor parties, on the ground that if that party could increase its support it would come at the expense of the other major party.

The incumbent administration also purchases political advertising during election campaigns. In 1978, for example, the administration of President Carlos Andres Perez spent almost as much on television advertising as the two major party organizations. By law the administration's political commercials could not openly support the cause of the Accion Democratica candidate, but the AD broadcast its political commercials in sequence with the administration's commercials so as to suggest that their candidate's election would mean a continuation of the successes of the Andres Perez administration.

In 1978 the total expenditures for all political advertising by all parties were roughly estimated at $150 million (in U.S. dollars), of which at least 80 percent was spent on television. The great importance of political advertising on television is also shown by the fact that a number of major American political consultants, including John Deardourff, David Garth, Joe Napolitan, and F. Clifton White, have been hired by one party or the other to design and direct its campaign.

For a nation which mobilizes only 5 to 6 million voters in presidential elections, this is a truly enormous outlay on televised political advertising, and it may well be that more money is spent per voter on such advertising in Venezuela than in any other country in the world.

Summary

Three of our countries, France, West Germany, and the United Kingdom, do not allow purchased political advertising of any kind. Canada allows it, but puts strict limitations on the total amount of time that may be purchased. Italy allows it only at the local level, where it plays only a minor role. Only in Venezuela is purchased political advertising of major importance, and it may be more lavish, more expensive, and more influential there than in any other country in the world, including the United States.

7. REGULATION OF THE CONTENTS OF PARTY POLITICAL BROADCASTS AND POLITICAL ADVERTISING

In all six of our countries, party political broadcasts and political advertising, like all other forms of communication, operate under the restrictions of certain general laws, such as those against libel, the broadcasting of obscene materials, and the like. In this section, however, we are concerned with whatever restrictions are placed upon the kinds of production materials and program designs used by the parties and their media consultants in the preparation of party political broadcasts and (if any) political advertisements.

Canada

Although, as we have seen, Canadian law provides some free television time for party political broadcasts and limits the amount of advertising time a party may purchase, there are no special restrictions upon the use of production materials by the parties in the preparation of their broadcasts and advertisements. "Spot" commercials of thirty and sixty seconds in duration are widely used, and, like such "spots" everywhere, their very nature requires that they make their points as vividly as possible in a very short time, and this means the use of various kinds of production materials. In general, they are not dissimilar to comparable political "spots" on the American commercial networks.

France

Of our six countries, France is the only one which imposes strong restraints on how the candidates and parties make use of their PPBs by prohibiting the use of production materials. Since 1965 the following rules have governed the appearance of presidential candidates on French television during election campaigns:

1. The candidate must use the time he is given for the personal presentation of his views; he is not allowed to use films or interviews.

2. The decor of the set must be neutral -- that is, it must not be different in any substantial way from the decor of the sets used for the PPBs of the other presidential candidates.

3. The broadcast must be recorded before it is actually broadcast and reviewed by the authorities for its compliance with the rules before it can be put on the air.

As Monica Charlot sums it up in AEI's study of the French presidential election of 1974, "The style of the official campaign is direct, allowing no room for gimmicks or effects. Candidates cannot show films or conduct interviews in the street -- or anywhere save in the studio. The amount of time a candidate may spend actually recording his broadcasts is severely limited, and although he may make more than one version of a broadcast, he may not piece together bits from successive recordings. He may only choose between recording A and recording B." (In Howard R. Penniman, ed., France at the Polls: The Presidential Election of 1974, American Enterprise Institute, 1975, p. 228.)

Germany

The law governing the production of PPBs in the Federal Republic of Germany stipulates that the material presented by any particular party in its PPBs must clearly be concerned with election campaigning and must not have the possibility of being mistaken for nonpolitical programs of the type ordinarily broadcast by the networks. Although this law has not yet been invoked to force a change in the design or presentation of any party political broadcast, it seems reasonable to assume that it prohibits a PPB from being presented in such a way as to make it look like a bona fide newscast or documentary or anything other than what it is -- a direct appeal by a party to the voters for their support. It does not confine the German parties, as French presidential appearances are confined, to "talking heads" presenting the party's views; but it does seem to leave them less free than is the case in the other four countries to package their PPBs in any way they wish. Even so, PPBs in Germany often use various kinds of production materials in their spots -- for example, they show party leaders apparently chatting with ordinary voters in the marketplace (the CDU made great use of this technique in the 1983 general election to emphasize its point that its leader, Helmut Kohl, is a true man-of-the-people); they also use charts, graphs, graphics, and other visual techniques to make their pitches as compelling as possible.

Italy

For most of the free time it gives to the political parties, RAI prescribes the format -- for example, it requires interviews of party leaders by newspaper correspondents, one-on-one debates between party leaders, and the like. Only in their fifteen-minute party-controlled broadcasts are the parties free to do as they wish, and in those broadcasts they use production materials freely. There has been some talk in Parliament that more severe restrictions should be placed upon what the parties do in their PPBs, but so far no action has been taken.

United Kingdom

Since the first PPBs were broadcast in 1951 the BBC, which broadcasts the programs, has followed the rule that the parties will have complete editorial control over the programs' contents. In the early years the BBC offered its facilities and producers to advise the parties on how to make their PPBs most effective, but in recent years television producing specialists hired by the parties have taken over the production of the PPBs completely. The BBC broadcasts whatever they produce, and the IBA relays whatever the BBC broadcasts.

From the beginning all the parties have to some degree used production materials, such as graphs, graphics, music, shots of leaders communing with the common people, and so on, and have never confined themselves to the "talking heads" insisted on by the French. In the first use of PPBs in 1951, indeed, there was even a small flap about whether a graph used by the Conservatives accurately represented the statistics it was supposed to illustrate.

In their book on the 1979 general election Butler and Kavanagh give a typical illustration of a PPB, in this case on behalf of the Conservatives: "Film of runners running around athletics track. Voice-over: Welcome to the International Prosperity Race run over five years. British runners under Labour management weighed down by taxation, unemployment, inflation; intercut with graphics and voice-over giving facts: inflation under Labour worst since Great Plague, dole queue from London to Inverness. British runners left behind by Japanese, French and German teams. Film of bottles on conveyer belt; production low under Labour. Cut back to race: British runners collapse, crowd calls for change of management: Conservatives step in, take off all weights, intercut with graphics and facts: take-home pay higher under Troy governments since war, Tories cut taxes" — and so on. (David Butler and Dennis Kavanagh, The British General Election of 1979, Macmillan, 1980, p. 223).

Venezuela

Venezuela has no detailed regulations restricting the content of paid political advertisements. However, the Supreme Electoral Council has the power to order the withdrawal of any political commercial that breaches "good taste" or significantly misrepresents the position of an opponent, or in other ways transcends the boundaries of fairness. The Council rarely orders such a withdrawal, but it is not completely unknown. In 1968, for example, a television commercial prepared by the Social Christian party described the poverty in the home town of the other party's presidential candidate, and implied that if he had been unable to do anything about the problems of those with whom he was reared, he could not be expected to act effectively on the much larger national issues which Venezuela would confront during the next presidential term. In the same election the Accion Democratica party broadcast a political commercial portraying the Social Christian candidate as a little boy making gestures toward the Venezuelan people. The Supreme Electoral Council ordered both commercials off the air.

In the 1978 presidential election rumors circulated that David Garth intended to use "subliminal" tecniques in the advertisements he was preparing for the campaign of the Social Christian candidate, and the SEC issued a decree forbidding the use of subliminal propaganda and other means of "hidden psychological persuasion" in televised political advertising. This in turn led the Ministry of Communications to prohibit the use of subliminal appeals in any kind of advertising. Otherwise political parties and their campaign consultants are free to use any materials they wish, and they use as great a variety as those used in the United States.

Summary

Of our six countries, France is the only one that in effect prohibits the use of production materials in party political broadcasts (remember, there is no purchased political advertising in France). Germany has a rule that PPBs cannot be presented in a way that might lead the viewers not to recognize them as party political advocacy, but that rule has not yet been invoked, and German parties make considerable use of production materials in the preparation of their PPBs. Venezuela, despite the general free-wheeling and big-spending nature of its voluminous purchased political advertising, has nevertheless on occasion prohibited the use of certain kinds of production techniques and has actually ordered the withdrawal of some political advertisements. Italy, by confining PPBs in national elections to the state-run RAI programs and by RAI's prescription of the format for most of the PPB broadcasts, also significantly limits the freedom of the parties to put their cases in any way they wish. Both Canada and the United Kingdom allow the parties and their media consultants to use whatever production materials they wish in the preparation of their PPBs and (in the case of Canada only) their political advertisements.

8. CONCLUSION

To summarize as succinctly as possible the complex and detailed information presented in the foregoing pages, we conclude with the following summary table.

Table 2

The Regulation of Political Advertising on Television in Six Selected Democracies: A Summary

	Canada	France	West Germany	Italy	United Kingdom	Venezuela
Television Ownership P-entirely public C-entirely commercial PC-mixture public and commercial	PC	PC	P	PC	PC	PC
Commercial Advertising C-commercial stations only PC-both public and commercial stations	PC	PC	P	PC	C	C
Free Time to Parties? Y-yes; N-no	Y	Y	Y	Y	Y	N
Free Time Allocated E-equally P-proportionally	P	E-pres. P-leg.	P	P	P	--
Paid Political Ads? O-none C-commercial stations only PC-both public and commercial stations	PC	O	O	O-national C-local	O	C
Limits on Spending for Ads? Y-yes; N-no	Y	--	--	N	--	N
Restrictions on Use of Production Materials in PPBs or Ads? O-none M-moderate S-severe	O	S	M	M	O	M

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September 11, 1989

The Honorable Daniel K. Inouye
Chairman
Communications Subcommittee
United States Senate
722 Senate Hart Office Building
Washington, DC 20510

Dear Mr. Chairman:

On August 2, 1989, the Communications Subcommittee held a hearing on lowest unit rate legislation. NAB was represented at this hearing by Levitt J. Pope, Chairman and CEO of WPIX, Inc., and a member of our Board of Directors. NAB would like to submit for the record further information and observations on some of the issues that were raised at this hearing.

There was considerable discussion in the hearing on the present authority of the Federal Communications Commission to compel stations to disclose to it their commercial advertising rates, when questions on such rates are raised by candidates regarding lowest unit charges. There was general agreement by two of the witnesses, Ms. Cathy Farrell and Ms. Jan Crawford, that one of the primary justifications for this legislation is that the FCC does not possess such authority today.

For example, Ms. Farrell testified that:

> . . . the most important part of this bill should be the ability of the regulating office to look at the records of a station to determine whether the lowest unit rate in fact is being provided. At the present time, we all have the right to look at a station's records concerning political orders, but the FCC Fairness Division cannot look at orders from a commercial advertiser. These, however, are the orders that determine the lowest unit rate for a political campaign. Without access to these records, the FCC has no way of knowing whether the law is being violated.

This is not correct. The FCC presently does have access to stations' commercial records. The Commission does not require stations to make their commercial advertising figures available to candidates or their time buyers. As Mr. Pope testified, it would be unfair to force a station to make its commercial books directly available to candidates' buyers, who frequently also work as commercial time buyers with the station's competitors in that market.

However, the FCC does require stations to disclose their commercial records to the Commission when candidates have raised questions or complaints which warrant FCC investigation regarding the rates which they are being offered or charged. Furthermore, NAB understands that the FCC staff has informed political time buyers of this policy. This reinforces NAB's position that, because existing laws and regulations are in place to ensure that candidates receive lowest unit charges without discrimination or favoritism, legislation is not needed.

Another area that requires clarification is the amount of revenue that stations derive from the sale of political time. Senator Mitch McConnell stated that NAB's witness in the Communications Subcommittee hearing on lowest unit rate legislation during the 100th Congress testified that "the total advertising revenue from political candidates is only 0.75%."

NAB was represented in that hearing by Mr. Cullie Tarleton, Senior Vice President and General Manager of WBTV-TV. In the hearing, Senator McConnell and Mr. Tarleton had the following exchange:

> Senator McConnell: As I indicated in my testimony -- and I don't know whether you were here or not to hear it -- about three-quarters of one percent of total advertising revenue in your industry in this country comes from political campaigns. It's three-quarters of one percent.
>
> Are you telling me that you are against a bill that would provide some relief to those who are seeking public office in this country that would take some chunk out of three-quarters of one percent of your total advertising revenue? Is that what you are telling me?
>
> Mr. Tarleton: Senator, our research indicates that the number is a little higher than 0.75 percent. It ranges from a low of 1 percent in the top markets to perhaps as high as 4 percent in smaller markets. But, even at 4 percent, that still does not represent a large percentage of a station's overall revenue.
>
> I would submit that the regulations are already there that protect the candidates, that give the candidates reasonable access to the broadcast station at rates comparable with the station's most favored advertisers, commercial advertisers.

NAB's most recent financial surveys indicate that political advertising revenues from the 1988 campaign remain within the 1% to 4% range, although they comprise more than 7% of stations' total revenues in a few markets.

NAB's opposition to this legislation, however, is not predicated upon its direct financial impact upon stations. As Mr. Pope's testimony noted, campaign advertising is placed largely within stations' fourth quarter, when commercial demand is greatest due to holiday advertising and the kickoff of the fall television season. This legislation would increase demand for campaign spots, which will put even more pressure on stations' limited advertising inventories.

Finally, there was some discussion about whether the legislation should apply only to federal candidates or to all candidates, and if so, whether "reasonable access" rights should be extended to non-federal candidates. NAB's position is that the legislation should be restricted to federal candidates only. In addition, NAB wishes to reemphasize that it strongly opposes extending "reasonable access" rights to non-federal candidates. As Mr. Pope noted during the hearing, such a drastic change in law would, instead of simplifying the present situation, greatly complicate and worsen it.

On behalf of NAB, I appreciate the opportunity to expand upon our testimony on this important subject. NAB stands ready to work with you and the Subcommittee as you continue your consideration of this legislation.

Sincerely,

James C May